



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 14 1986

MEMORANDUM

SUBJECT: Final EPA Policy on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements

FROM: Thomas L. Adams, Jr. *Thomas L. Adams, Jr.*
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Addressees

On July 17, 1986, this Office circulated a draft EPA Policy on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements. I am pleased to report that Agency comments were almost uniformly supportive of the draft as written. Attached please find a final version of the policy, including summaries of the known auditing settlements that Agency personnel have achieved to date and several model audit provisions that Agency negotiators may use as a starting point in fashioning settlements that address the circumstances of each case.

I believe that the inclusion of environmental auditing provisions in selected settlements offers EPA the ability to accomplish more effectively its primary mission, namely, to secure environmental compliance. Accordingly, I would like to renew last July's call for EPA's Offices of Regional Counsel and program enforcement offices to consider including audit provisions in settlements where the underlying cases meet the criteria of the attached policy statement.

Inquiries concerning this policy should be directed to Neil Stoloff, Legal Enforcement Policy Branch, FTS 475-8777, E-Mail box 2261, LE-130A. Thank you for your consideration of this important matter.

Attachments

Addressees:

Assistant Administrators
Associate Administrator for Regional Operations
General Counsel
Associate Enforcement Counsels
Director, Office of Criminal Enforcement and Special Litigation
Director, Office of Compliance Analysis and Program Operations
Headquarters Compliance Program Division Directors
Director, NEIC
Regional Administrators, Regions I-X
Regional Counsels, Regions I-X
Regional Compliance Program Division Directors, Regions I-X
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cc: Administrator
Deputy Administrator
John Ulfelder
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EPA POLICY ON THE INCLUSION OF ENVIRONMENTAL AUDITING PROVISIONS IN ENFORCEMENT SETTLEMENTS

I. Purpose

The purpose of this document is to provide Agency enforcement personnel with general criteria for and guidance on selecting judicial and administrative enforcement cases in which EPA will seek to include environmental auditing provisions among the terms of any settlement. This document supplements the "Guidance for Drafting Judicial Consent Decrees."1/

II. Background

On July 9, 1986, EPA announced its environmental auditing policy statement (Attachment A) which encourages the regulated community's use of environmental auditing to help achieve and maintain compliance with environmental laws and regulations.2/ That policy states that "EPA may propose environmental auditing provisions in consent decrees and in other settlement negotiations where auditing could provide a remedy for identified problems and reduce the likelihood of similar problems recurring in the future."3/

In recent years, Agency negotiators have achieved numerous settlements that require regulated entities to audit their operations. (Attachment B is a representative sample of the auditing settlements that the Agency has achieved to date.) These innovative settlements have been highly successful in enabling the Agency to accomplish more effectively its primary mission, namely, to secure environmental compliance. Indeed, auditing provisions in enforcement settlements have provided several important benefits to the Agency by enhancing its ability to:

- Address compliance at an entire facility or at all facilities owned or operated by a party, rather than just the violations discovered during inspections; and identify and correct violations that may have gone undetected (and uncorrected) otherwise.
- Focus the attention of a regulated party's top-level management on environmental compliance; produce corporate policies and procedures that enable a party to achieve and maintain compliance; and help a party to manage pollution control affirmatively over time instead of reacting to crises.
- Provide a quality assurance check by verifying that existing environmental management practices are in place, functioning and adequate.

III. Statement of Policy

It is the policy of EPA to settle its judicial and administrative enforcement cases only where violators can assure the Agency that their noncompliance will be (or has been) corrected.^{4/} In some cases, such assurances may, in part, take the form of a party's commitment to conduct an environmental audit of its operations. While this would not replace the need for correction of the specific noncompliance that prompted an enforcement action, EPA nonetheless considers auditing an appropriate part of a settlement where heightened management attention could lower the potential for noncompliance to recur. For that reason, and as stated in the Agency's published policy, "[e]nvironmental auditing provisions are most likely to be proposed in settlement negotiations when:

- A pattern of violations can be attributed, at least in part, to the absence or poor functioning of an environmental management system; or
- The type or nature of violations indicates a likelihood that similar noncompliance problems may exist or occur elsewhere in the facility or at other facilities operated by the regulated entity."^{5/}

This policy is particularly applicable in cases involving the owner or operator of extensive or multiple facilities, where inadequate environmental management practices are likely to extend throughout those facilities.^{6/} Nevertheless, even small, single-facility operations may face the types of compliance problems that make an audit requirement an appropriate part of a settlement.

The environmental statutes provide EPA broad authority to compel regulated entities to collect and analyze compliance-related information.^{7/} Given this statutory authority, and the equitable grounds for imposing a requirement to audit under the circumstances outlined in this policy statement, such a requirement may be imposed as a condition of settlement or, in the absence of a party's willingness to audit voluntarily, sought from a court or administrative tribunal.

EPA encourages state and local regulatory agencies that have independent jurisdiction over regulated entities to consider applying this policy to their own enforcement activities, in order to advance the consistent and effective use of environmental auditing.^{8/}

a. Scope of the Audit Requirement

In those cases where it may be appropriate to propose an environmental audit as part of the remedy, negotiators must decide which type(s) of audit to propose in negotiations. This

determination will turn on the nature and extent of the environmental management problem, which could range from a specific management gap at a single facility 9/ to systematic, widespread, multi-facility, multi-media environmental violations. 10/ In most cases, either (or both) of the following two types of environmental audits should be considered:

1. Compliance Audit: An independent assessment of the current status of a party's compliance with applicable statutory and regulatory requirements. This approach always entails a requirement that effective measures be taken to remedy uncovered compliance problems and is most effective when coupled with a requirement that the root causes of noncompliance also be remedied. 11/

2. Management Audit: An independent evaluation of a party's environmental compliance policies, practices, and controls. Such evaluation may encompass the need for: (1) a formal corporate environmental compliance policy, and procedures for implementation of that policy; (2) educational and training programs for employees; (3) equipment purchase, operation and maintenance programs; (4) environmental compliance officer programs (or other organizational structures relevant to compliance); (5) budgeting and planning systems for environmental compliance; (6) monitoring, recordkeeping and reporting systems; (7) in-plant and community emergency plans; (8) internal communications and control systems; and (9) hazard identification and risk assessment. 12/

Whether to seek a compliance audit, a management audit, or both will depend upon the unique circumstances of each case. A compliance audit usually will be appropriate where the violations uncovered by Agency inspections raise the likelihood that environmental noncompliance exists elsewhere within a party's operations. A management audit should be sought where it appears that a major contributing factor to noncompliance is inadequate (or nonexistent) managerial attention to environmental policies, procedures or staffing. 13/ Both types of audits should be sought where both current noncompliance and shortcomings in a party's environmental management practices need to be addressed. 14/

In cases where EPA negotiators determine that an acceptable settlement should include an audit provision, the attached model provisions 15/ may be used as a starting point in fashioning a settlement tailored to the specific circumstances of each case. The model provisions are based on settlements addressing a broad range of circumstances that give rise to audits.

3. Elements of Effective Audit Programs. Most environmental audits conducted pursuant to enforcement settlements should, at a minimum, meet the standards provided in "Elements of Effective Environmental Auditing Programs," the Appendix to

the Agency's published policy on auditing. Those elements include:

- Explicit top management support for environmental auditing and commitment to follow-up on audit findings.
- An environmental audit team separate from and independent of the persons and activities to be audited.
- Adequate team staffing and auditor training.
- Explicit audit program objectives, scope, resources and frequency.
- A process which collects, analyzes, interprets and documents information sufficient to achieve audit objectives.
- A process which includes specific procedures to promptly prepare candid, clear and appropriate written reports on audit findings, corrective actions, and schedules for implementation.
- A process which includes quality assurance procedures to ensure the accuracy and thoroughness of environmental audits.16/

Agency negotiators may consult EPA's program and enforcement offices and the National Enforcement Investigations Center, which can provide technical advice to negotiators in fashioning auditing provisions that meet the needs of both the party and the regulatory program(s) to which it is subject. Additional information on environmental auditing practices can be found in various published materials.17/

A settlement's audit requirements may end after the party meets the agreed-upon schedule for implementing them. Nevertheless, the Agency expects that most audit programs established through settlements will continue beyond the life of the settlement. After the settlement expires, the success of those programs may be monitored indirectly through the routine inspection process.

b. Agency Oversight of the Audit Process

In most cases, resource and policy constraints will preclude a high level of Agency participation in the audit process. Several successful audit settlements indicate that the benefits of auditing may be realized simply by obtaining a party's commitment to audit its operations for environmental compliance or management problems (or both), remedy any problems uncovered, and certify to the Agency that it has done so.18/ Other recent Agency settlements, also successful, have entailed full disclosure of the auditor's report of findings regarding noncompliance,

and even access to the company records which the auditors examined.19/ Audit settlements that require either self-certification or full disclosure of audit results may require a party to submit to the Agency an environmental management or compliance plan (or both) that addresses identified problems, to be implemented on an enforceable schedule.20/

These approaches require the Agency neither to devote significant resources to oversight of the audit process nor to depart from its traditional means of enforcing the terms of consent decrees and agreements. Although it may--and will--evaluate audit proposals in terms of the elements described in §III.a.3. above, in all but the most extreme cases 21/ the Agency will not specify the details of a party's internal management systems. Rather, an independent audit represents one step a violator can take toward assuring the Agency that compliance will be achieved and maintained.22/

Considerations such as the seriousness of the compliance problems to be addressed by an audit provision, a party's overall compliance history, and resource availability will dictate the extent to which the Agency monitors the audit process in particular cases. Thus, it will usually be appropriate to withhold approval of an audit plan for a party with an extensive history of noncompliance unless the plan requires:

- Use of an independent third-party auditor not affiliated with the audited entity;
- Adherence to detailed audit protocols; and
- More extensive Agency role in identifying corrective action.23/

c. Agency Requests for Audit-Related Documents

The various environmental statutes provide EPA with broad authority to gain access to documents and information necessary to determine whether a regulated party is complying with the requirements of a settlement.24/ Notwithstanding such statutory authority, Agency negotiators should expressly reserve EPA's right to review audit-related documents.25/

d. Stipulated Penalties for Audit-Discovered Violations

Settlements which require a party to report to EPA audit-discovered violations may include stipulations regarding the amount of penalties for violations that are susceptible to prediction and are promptly remedied, with the parties reserving their respective rights and liabilities for other violations.26/ This policy does not authorize reductions of penalty amounts below those that would otherwise be dictated by applicable penalty policies, which take into account the circumstances

surrounding violations in guiding the calculation of appropriate penalty amounts. It is therefore important that stipulated penalties only apply to those classes of violations whose surrounding circumstances may be reasonably anticipated. The application of stipulated penalties to violations discovered during an audit is consistent with Agency policy.27/

e. Effect of Auditing on Agency Inspection and Enforcement

1. Inspections

The Agency's published policy on auditing states that "EPA will not promise to forgo inspections, reduce enforcement responses, or offer other such incentives in exchange for implementation of environmental auditing or other sound environmental practice. Indeed, a credible enforcement program provides a strong incentive for regulated entities to audit."28/

Consistent with stated Agency policy, the inclusion of audit provisions in settlements will not affect Agency inspection and enforcement prerogatives. On the contrary, a party's incentive to accept auditing requirements as part of a settlement stems from the Agency's policy to inspect and enforce rigorously against known violators who fail to assure the Agency that they are taking steps to remedy their noncompliance. Auditing settlements should explicitly provide that Agency (and State) inspection and enforcement prerogatives, and a party's liability for violations other than those cited in the underlying enforcement action (or subject to stipulated penalties), are unaffected by the settlement.29/

2. Civil Penalty Adjustments

Several audit settlements achieved to date have mitigated penalties to reflect a party's agreement to audit. In view of EPA's position that auditing fosters environmental compliance, EPA negotiators may treat a commitment to audit as a demonstration of the violator's honest and genuine efforts to remedy noncompliance. This may be taken into account when calculating the dollar amount of a civil penalty.30/ In no case will a party's agreement to audit result in a penalty amount lower than the economic benefit of noncompliance.

For judicial settlements where penalties are proposed to be mitigated in view of audit provisions, negotiators should coordinate with the Department of Justice (DOJ) to ensure consistency with applicable DOJ settlement policies.

3. Confidentiality

EPA does not view as confidential per se audit-related documents submitted to the Agency pursuant to enforcement settlements. Such documents may, however, contain confidential

business information (CBI). Auditing provisions should indicate that EPA will treat such information in the same manner that all other CBI is treated.^{31/} Where appropriate, negotiators may consider defining in advance which categories of audit information will qualify for CBI treatment.^{32/} Such determinations shall be concurred in by the Office of General Counsel, in accordance with 40 CFR Part 2.

The Freedom of Information Act (FOIA) may provide additional bases for protecting privileged information from disclosure.^{33/} However, determinations under FOIA are within the sole discretion of the Agency and therefore are not an appropriate subject of negotiation.

IV. Coordination of Multi-Facility Auditing Settlements

When negotiating with a party over facilities located in more than one EPA region, Agency personnel should consult with affected regions and states to ensure that pending or planned enforcement actions in other regions will not be affected by the terms of an audit settlement. This may be done directly (e.g., pursuant to existing State/EPA Enforcement Agreements) or with the assistance of OECM's Legal Enforcement Policy Branch (LEPB), which will serve as a clearinghouse for information on auditing in an enforcement context (contact: Neil Stoloff, LEPB, FTS 475-8777, LE-130A, E-Mail Box EPA 2261).

In most cases, however, auditing settlements that embrace facilities in more than one region will affect neither the Agency's inspection and enforcement prerogatives nor a party's liability for violations other than those which gave rise to the underlying enforcement action.^{34/} Accordingly, inter-office consultation in most cases will be necessary only for informational purposes. Some multi-facility settlements will fall within the scope of the guidance document, "Implementing Nationally Managed or Coordinated Enforcement Actions."^{35/} Such settlements should be conducted in accordance with that document and the memorandum, "Implementing the State/Federal Partnership in Enforcement: State/Federal Enforcement Agreements."^{36/}

Attachments

FOOTNOTES

1. EPA General Enforcement Policy No. GM-17, October 19, 1983.
2. 51 Fed. Reg. 25004 (1986).
3. 51 Fed. Reg. 25007 (1986).
4. See "Working Principles Underlying EPA's National Compliance/ Enforcement Programs," at 7 (EPA General Enforcement Policy No. GM 24, November 22, 1983).
5. 51 Fed. Reg. 25007 (1986).
6. See, e.g., Owens-Corning Fiberglas Corp., Attachment B, p. 1; and Attachments D-F.
7. See, e.g., the Clean Air Act (CAA) §§113 and 114, the Clean Water Act (CWA) §§308 and 309, and the Resource Conservation and Recovery Act (RCRA) §§3007 and 3008.
8. See 51 Fed. Reg. 25008 (1986).
9. See, e.g., BASF Systems Corp., Attachment B, p. 3.
10. See Attachment F.
11. See Attachment C.
12. See Attachment D.
13. See Chemical Waste Management, Inc., Vickery, Ohio and Kettleman Hills, California facilities, Attachment B, pp. 1 and 2 respectively; and Attachment D.
14. See Attachments E and F.
15. Attachments C-G.
16. See 51 Fed. Reg. 25009 (1986).
17. See, e.g., "Current Practices in Environmental Auditing," EPA Report No. EPA-230-09-83-006, February 1984; "Annotated Bibliography on Environmental Auditing," September 1985, both available from EPA's Office of Policy, Planning and Evaluation, Regulatory Reform Staff, PM-223, FTS 382-2685.
18. See, e.g., Crompton and Knowles Corp., Attachment B, p. 1; and Attachments C-E).
19. See, e.g., Chemical Waste Management, Inc., Vickery, Ohio and Kettleman Hills, California facilities, Attachment B, pp. 1 and 2 respectively; and Attachment E.

20. See, e.g., United States v. Georgia Pacific Corp., Attachment B, p. 2; Attachment D, §B.3; and Attachment F, §§6(1) and 9.
21. See, e.g., Attachment G.
22. See, e.g., Potlatch Corp., Attachment B, p. 1; and Attachment C.
23. See Attachment F.
24. See, e.g., CAA §114, CWA §308, RCRA §3007, CERCLA §103, the Toxic Substances Control Act §8, and the Federal Insecticide, Fungicide and Rodenticide Act §8.
25. See, e.g., Attachment F, §IV, "Access to Documents."
26. See Attachment F, §§22, 23, 24, 34, and Appendix 2.
27. See "Guidance for Drafting Judicial Consent Decrees," at 22 (EPA General Enforcement Policy No. GM-17, October 19, 1983).
28. 51 Fed. Reg. 25007 (1986).
29. See Attachment C, §A.3; Attachment D, §B; Attachment E, §C.3; and Attachment F, §34.
30. See 51 Fed. Reg. 25007 (1986); EPA's Framework for Statute-Specific Approaches to Penalty Assessments, General Enforcement Policy No. GM-22, at p. 19; and applicable medium-specific penalty policies, e.g., TSCA Settlements with Conditions, November 15, 1983.
31. See "Guidance for Drafting Judicial Consent Decrees," at 23 (EPA General Enforcement Policy No. GM-17, October 19, 1983).
32. See Attachment F, §§5(2), 14, and 15.
33. See, e.g., 5 U.S.C. §552(b)(4), which encompasses voluntarily submitted information the disclosure of which would impair a Government interest such as EPA's interests in the settlement of cases and in ensuring compliance with statutes under its authority.
34. See Attachment F, §25.b.
35. General Enforcement Policy No. GM-35, January 4, 1985.
36. General Enforcement Policy No. GM-41, June 26, 1984.

SUMMARY OF ATTACHMENTS

ATTACHMENT A: Environmental Auditing Policy Statement,
51 Fed. Reg. 25004, July 9, 1986.

ATTACHMENT B: Representative Sample of Environmental Auditing
Settlements Achieved to Date, revised 10/9/86.

Attachment C: Model Environmental compliance audit provision,
with requirement for certification of compliance.

Attachment D: Model Environmental management audit provision,
with requirement for submission of plan for improvement of
environmental management practices, to be completed on an
enforceable schedule.

Attachment E: Model Environmental compliance and management
audit provision, with all audit results submitted to EPA, all
Agency enforcement prerogatives reserved.

Attachment F: Model Environmental compliance and management
audit provision, with extensive Agency oversight, audit results
disclosed, stipulated penalties applied to most prospective
violations, and all Agency enforcement prerogatives reserved
for other violations. [Most appropriate for party with an
extensive history of noncompliance.]

Attachment G: Model Emergency environmental management reorgan-
ization provision. [Appropriate for cases where a party's
environmental management practices are wholly inadequate and
action is necessary without waiting for the results of an
audit.]

Wednesday
July 9, 1986

Part IV

**Environmental
Protection Agency**

**Environmental Auditing Policy Statement;
Notice**

ENVIRONMENTAL PROTECTION AGENCY

(E-FRL-3046-6)

Environmental Auditing Policy Statement

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final policy statement.

SUMMARY: It is EPA policy to encourage the use of environmental auditing by regulated entities to help achieve and maintain compliance with environmental laws and regulations, as well as to help identify and correct unregulated environmental hazards. EPA first published this policy as interim guidance on November 8, 1985 (50 FR 46504). Based on comments received regarding the interim guidance, the Agency is issuing today's final policy statement with only minor changes.

This final policy statement specifically:

- Encourages regulated entities to develop, implement and upgrade environmental auditing programs;
- Discusses when the Agency may or may not request audit reports;
- Explains how EPA's inspection and enforcement activities may respond to regulated entities' efforts to assure compliance through auditing;
- Endorses environmental auditing at federal facilities;
- Encourages state and local environmental auditing initiatives; and
- Outlines elements of effective audit programs.

Environmental auditing includes a variety of compliance assessment techniques which go beyond those legally required and are used to identify actual and potential environmental problems. Effective environmental auditing can lead to higher levels of overall compliance and reduced risk to human health and the environment. EPA endorses the practice of environmental auditing and supports its accelerated use by regulated entities to help meet the goals of federal, state and local environmental requirements. However, the existence of an auditing program does not create any defense to, or otherwise limit, the responsibility of any regulated entity to comply with applicable regulatory requirements.

States are encouraged to adopt these similar and equally effective policies in order to advance the use of environmental auditing on a consistent, nationwide basis.

DATES: This final policy statement is effective July 9, 1986.

FOR FURTHER INFORMATION CONTACT:

Leonard Fleckenstein, Office of Policy,
Planning and Evaluation, (202) 382-
2728;

or

Cheryl Wasserman, Office of
Enforcement and Compliance
Monitoring, (202) 382-7550.

SUPPLEMENTARY INFORMATION:

ENVIRONMENTAL AUDITING POLICY STATEMENT

I. Preamble

On November 8, 1985 EPA published an Environmental Auditing Policy Statement, effective as interim guidance, and solicited written comments until January 7, 1986.

Thirteen commenters submitted written comments. Eight were from private industry. Two commenters represented industry trade associations. One federal agency, one consulting firm and one law firm also submitted comments.

Twelve commenters addressed EPA requests for audit reports. Three comments per subject were received regarding inspections, enforcement response and elements of effective environmental auditing. One commenter addressed audit provisions as remedies in enforcement actions, one addressed environmental auditing at federal facilities, and one addressed the relationship of the policy statement to state or local regulatory agencies. Comments generally supported both the concept of a policy statement and the interim guidance, but raised specific concerns with respect to particular language and policy issues in sections of the guidance.

General Comments

Three commenters found the interim guidance to be constructive, balanced and effective at encouraging more and better environmental auditing.

Another commenter, while considering the policy on the whole to be constructive, felt that new and identifiable auditing "incentives" should be offered by EPA. Based on earlier comments received from industry, EPA believes most companies would not support or participate in an "incentives-based" environmental auditing program with EPA. Moreover, general promises to forgo inspections or reduce enforcement responses in exchange for companies' adoption of environmental auditing programs—the "incentives" most frequently mentioned in this context—are fraught with legal and policy obstacles.

Several commenters expressed concern that states or localities might

use the interim guidance to *require* auditing. The Agency disagrees that the policy statement opens the way for states and localities to require auditing. No EPA policy can grant states or localities any more (or less) authority than they already possess. EPA believes that the interim guidance effectively encourages *voluntary* auditing. In fact, Section II.B. of the policy states: "because audit quality depends to a large degree on genuine management commitment to the program and its objectives, auditing should remain a voluntary program."

Another commenter suggested that EPA should not expect an audit to identify all potential problem areas or conclude that a problem identified in an audit reflects normal operations and procedures. EPA agrees that an audit report should clearly reflect these realities and should be written to point out the audit's limitations. However, since EPA will not routinely request audit reports, the Agency does not believe these concerns raise issues which need to be addressed in the policy statement.

A second concern expressed by the same commenter was that EPA should acknowledge that environmental audits are only part of a successful environmental management program and thus should not be expected to cover every environmental issue or solve all problems. EPA agrees and accordingly has amended the statement of purpose which appears at the end of this preamble.

Yet another commenter thought EPA should focus on environmental performance results (compliance or non-compliance), not on the processes or vehicles used to achieve those results. In general, EPA agrees with this statement and will continue to focus on environmental results. However, EPA also believes that such results can be improved through Agency efforts to identify and encourage effective environmental management practices, and will continue to encourage such practices in non-regulatory ways.

A final general comment recommended that EPA should sponsor seminars for small businesses on how to start auditing programs. EPA agrees that such seminars would be useful. However, since audit seminars already are available from several private sector organizations, EPA does not believe it should intervene in that market, with the possible exception of seminars for government agencies, especially federal agencies, for which EPA has a broad mandate under Executive Order 12088 to

provide technical assistance for environmental compliance.

Requests for Reports

EPA received 12 comments regarding Agency requests for environmental audit reports, far more than on any other topic in the policy statement. One commenter felt that EPA struck an appropriate balance between respecting the need for self-evaluation with some measure of privacy, and allowing the Agency enough flexibility of inquiry to accomplish future statutory missions. However, most commenters expressed concern that the interim guidance did not go far enough to assuage corporate fears that EPA will use audit reports for environmental compliance "witch hunts." Several commenters suggested additional specific assurances regarding the circumstances under which EPA will request such reports.

One commenter recommended that EPA request audit reports only "when the Agency can show the information it needs to perform its statutory mission cannot be obtained from the monitoring, compliance or other data that is otherwise reportable and/or accessible to EPA, or where the Government deems an audit report material to a criminal investigation." EPA accepts this recommendation in part. The Agency believes it would not be in the best interest of human health and the environment to commit to making a "showing" of a compelling information need before ever requesting an audit report. While EPA may normally be willing to do so, the Agency cannot rule out in advance all circumstances in which such a showing may not be possible. However, it would be helpful to further clarify that a request for an audit report or a portion of a report normally will be made when needed information is not available by alternative means. Therefore, EPA has revised Section III.A., paragraph two and added the phrase: "and usually made where the information needed cannot be obtained from monitoring, reporting or other data otherwise available to the Agency."

Another commenter suggested that (except in the case of criminal investigations) EPA should limit requests for audit documents to specific questions. By including the phrase "or relevant portions of a report" in Section III.A., EPA meant to emphasize it would not request an entire audit document when only a relevant portion would suffice. Likewise, EPA fully intends not to request even a portion of a report if needed information or data can be otherwise obtained. To further clarify this point EPA has added the phrase,

"most likely focused on particular information needs rather than the entire report," to the second sentence of paragraph two, Section III.A.

Incorporating the two comments above, the first two sentences in paragraph two of final Section III.A. now read: "EPA's authority to request an audit report, or relevant portions thereof, will be exercised on a case-by-case basis where the Agency determines it is needed to accomplish a statutory mission or the Government deems it to be material to a criminal investigation. EPA expects such requests to be limited, most likely focused on particular information needs rather than the entire report, and usually made where the information needed cannot be obtained from monitoring, reporting or other data otherwise available to the Agency."

Other commenters recommended that EPA not request audit reports under any circumstances, that requests be "restricted to only those legally required," that requests be limited to criminal investigations, or that requests be made only when EPA has reason to believe "that the audit programs or reports are being used to conceal evidence of environmental non-compliance or otherwise being used in bad faith." EPA appreciates concerns underlying all of these comments and has considered each carefully. However, the Agency believes that these recommendations do not strike the appropriate balance between retaining the flexibility to accomplish EPA's statutory missions in future, unforeseen circumstances, and acknowledging regulated entities' need to self-evaluate environmental performance with some measure of privacy. Indeed, based on prime informal comments, the small number of formal comments received, and the even smaller number of adverse comments, EPA believes the final policy statement should remain largely unchanged from the interim version.

Elements of Effective Environmental Auditing

Three commenters expressed concerns regarding the seven general elements EPA outlined in the Appendix to the interim guidance.

One commenter noted that were EPA to further expand or more fully detail such elements, programs not specifically fulfilling each element would then be judged inadequate. EPA agrees that presenting highly specific and prescriptive auditing elements could be counter-productive by not taking into account numerous factors which vary extensively from one organization to another, but which may still result in effective auditing programs.

Accordingly, EPA does not plan to expand or more fully detail these auditing elements.

Another commenter asserted that states and localities should be cautioned not to consider EPA's auditing elements as mandatory steps. The Agency is fully aware of this concern and in the interim guidance noted its strong opinion that "regulatory agencies should not attempt to prescribe the precise form and structure of regulated entities' environmental management or auditing programs." While EPA cannot require state or local regulators to adopt this or similar policies, the Agency does strongly encourage them to do so, both in the interim and final policies.

A final commenter thought the Appendix too specifically prescribed what should and what should not be included in an auditing program. Other commenters, on the other hand, viewed the elements described as very general in nature. EPA agrees with these other commenters. The elements are in no way binding. Moreover, EPA believes that most mature, effective environmental auditing programs do incorporate each of these general elements in some form, and considers them useful yardsticks for those considering adopting or upgrading audit programs. For these reasons EPA has not revised the Appendix in today's final policy statement.

Other Comments

Other significant comments addressed EPA inspection priorities for, and enforcement responses to, organizations with environmental auditing programs.

One commenter, stressing that audit programs are *internal* management tools, took exception to the phrase in the second paragraph of section III.B.1. of the interim guidance which states that environmental audits can "complement" regulatory oversight. By using the word "complement" in this context, EPA does not intend to imply that audit reports must be obtained by the Agency in order to supplement regulatory inspections. "Complement" is used in a broad sense of being in addition to inspections and providing something (i.e., self-assessment) which otherwise would be lacking. To clarify this point EPA has added the phrase "by providing self-assessment to assure compliance" after "environmental audits may complement inspections" in this paragraph.

The same commenter also expressed concern that, as EPA sets inspection priorities, a company having an audit program could appear to be a "poor performer" due to complete and accurate reporting when measured against a

company which reports something less than required by law. EPA agrees that it is important to communicate this fact to the Agency and state personnel, and will do so. However, the Agency does not believe a change in the policy statement is necessary.

A further comment suggested EPA should commit to take auditing programs into account when assessing all enforcement actions. However, in order to maintain enforcement flexibility under varied circumstances, the Agency cannot promise reduced enforcement responses to violations at all audited facilities when other factors may be overriding. Therefore the policy statement continues to state that EPA may exercise its discretion to consider auditing programs as evidence of honest and genuine efforts to assure compliance, which would then be taken into account in fashioning enforcement responses to violations.

A final commenter suggested the phrase "expeditiously correct environmental problems" not be used in the enforcement context since it implied EPA would use an entity's record of correcting nonregulated matters when evaluating regulatory violations. EPA did not intend for such an inference to be made. EPA intended the term "environmental problems" to refer to the existing circumstances which eventually lead up to the violations. To clarify this point, EPA is revising the first two sentences of the paragraph to which this comment refers by changing "environmental problems" to "violations and underlying environmental problems" in the first sentence and to "underlying environmental problems" in the second sentence.

In a separate development EPA is preparing an update of its January 1984 *Federal Facilities Compliance Strategy*, which is referenced in section III, C. of the auditing policy. The Strategy should be completed and available on request from EPA's Office of Federal Activities later this year.

EPA thanks all commenters for responding to the November 8, 1985 publication. Today's notice is being issued to inform regulated entities and the public of EPA's final policy toward environmental auditing. This policy was developed to help (a) encourage regulated entities to institutionalize effective audit practices as one means of improving compliance and sound environmental management, and (b) guide internal EPA actions directly related to regulated entities' environmental auditing programs.

EPA will evaluate implementation of this final policy to ensure it meets the above goals and continues to encourage

better environmental management, while strengthening the Agency's own efforts to monitor and enforce compliance with environmental requirements.

II. General EPA Policy on Environmental Auditing

A. Introduction

Environmental auditing is a systematic, documented, periodic and objective review by regulated entities¹ of facility operations and practices related to meeting environmental requirements. Audits can be designed to accomplish any or all of the following: verify compliance with environmental requirements; evaluate the effectiveness of environmental management systems already in place; or assess risks from regulated and unregulated materials and practices.

Auditing serves as a quality assurance check to help improve the effectiveness of basic environmental management by verifying that management practices are in place, functioning and adequate. Environmental audits evaluate, and are not a substitute for, direct compliance activities such as obtaining permits, installing controls, monitoring compliance, reporting violations, and keeping records. Environmental auditing may verify but does not include activities required by law, regulation or permit (e.g., continuous emissions monitoring, composite correction plans at wastewater treatment plants, etc.).² Audits do not in any way replace regulatory agency inspections. However, environmental audits can improve compliance by complementing conventional federal, state and local oversight.

The appendix to this policy statement outlines some basic elements of environmental auditing (e.g., auditor independence and top management support) for use by those considering implementation of effective auditing programs to help achieve and maintain compliance. Additional information on environmental auditing practices can be found in various published materials.³

¹ "Regulated entities" include private firms and public agencies with facilities subject to environmental regulation. Public agencies can include federal, state or local agencies as well as special-purpose organizations such as regional sewage commissions.

² See, e.g., "Current Practices in Environmental Auditing," EPA Report No. EPA-230-29-43-006, February 1984; "Annotated Bibliography on Environmental Auditing," Fifth Edition, September 1985, both available from: Regulatory Reform Staff, PM-223, EPA, 401 M Street SW, Washington, DC 20460.

Environmental auditing has developed for sound business reasons, particularly as a means of helping regulated entities manage pollution control affirmatively over time instead of reacting to crises. Auditing can result in improved facility environmental performance, help communicate effective solutions to common environmental problems, focus facility managers' attention on current and upcoming regulatory requirements, and generate protocols and checklists which help facilities better manage themselves. Auditing also can result in better-integrated management of environmental hazards, since auditors frequently identify environmental liabilities which go beyond regulatory compliance. Companies, public entities and federal facilities have employed a variety of environmental auditing practices in recent years. Several hundred major firms in diverse industries now have environmental auditing programs, although they often are known by other names such as assessment, survey, surveillance, review or appraisal.

While auditing has demonstrated its usefulness to those with audit programs, many others still do not audit. Clarification of EPA's position regarding auditing may help encourage regulated entities to establish audit programs or upgrade systems already in place.

B. EPA Encourages the Use of Environmental Auditing

EPA encourages regulated entities to adopt sound environmental management practices to improve environmental performance. In particular, EPA encourages regulated entities subject to environmental regulations to institute environmental auditing programs to help ensure the adequacy of internal systems to achieve, maintain and monitor compliance. Implementation of environmental auditing programs can result in better identification, resolution and avoidance of environmental problems, as well as improvements to management practices. Audits can be conducted effectively by independent internal or third party auditors. Larger organizations generally have greater resources to devote to an internal audit team, while smaller entities might be more likely to use outside auditors.

Regulated entities are responsible for taking all necessary steps to ensure compliance with environmental requirements, whether or not they adopt audit programs. Although environmental laws do not require a regulated facility to have an auditing program, ultimate responsibility for the environmental

performance of the facility lies with top management, which therefore has a strong incentive to use reasonable means, such as environmental auditing, to secure reliable information of facility compliance status.

EPA does not intend to dictate or interfere with the environmental management practices of private or public organizations. Nor does EPA intend to mandate auditing (though in certain instances EPA may seek to include provisions for environmental auditing as part of settlement agreements, as noted below). Because environmental auditing systems have been widely adopted on a voluntary basis in the past, and because audit quality depends to a large degree upon genuine management commitment to the program and its objectives, auditing should remain a voluntary activity.

III. EPA Policy on Specific Environmental Auditing Issues

A. Agency Requests for Audit Reports

EPA has broad statutory authority to request relevant information on the environmental compliance status of regulated entities. However, EPA believes routine Agency requests for audit reports³ could inhibit auditing in the long run, decreasing both the quantity and quality of audits conducted. Therefore, as a matter of policy, EPA will *not* routinely request environmental audit reports.

EPA's authority to request an audit report, or relevant portions thereof, will be exercised on a case-by-case basis where the Agency determines it is needed to accomplish a statutory mission, or where the Government deems it to be material to a criminal investigation. EPA expects such requests to be limited, most likely focused on particular information needs rather than the entire report, and usually made where the information needed cannot be obtained from monitoring, reporting or other data otherwise available to the Agency. Examples would likely include situations where: audits are conducted under consent decrees or other settlement agreements; a company has placed its management practices at issue by raising them as a defense; or state of mind or intent are a relevant element of inquiry, such as during a criminal investigation. This list

is illustrative rather than exhaustive, since there doubtless will be other situations, not subject to prediction, in which audit reports rather than information may be required.

EPA acknowledges regulated entities' need to self-evaluate environmental performance with some measure of privacy and encourages such activity. However, audit reports may not shield monitoring, compliance, or other information that would otherwise be reportable and/or accessible to EPA, even if there is no explicit requirement to generate that data.⁴ Thus, this policy does not alter regulated entities' existing or future obligations to monitor, record or report information required under environmental statutes, regulations or permits, or to allow EPA access to that information. Nor does this policy alter EPA's authority to request and receive any relevant information—including that contained in audit reports—under various environmental statutes (e.g., Clean Water Act section 308, Clean Air Act sections 114 and 208) or in other administrative or judicial proceedings.

Regulated entities also should be aware that certain audit findings may by law have to be reported to government agencies. However, in addition to any such requirements, EPA encourages regulated entities to notify appropriate State or Federal officials of findings which suggest significant environmental or public health risks, even when not specifically required to do so.

B. EPA Response to Environmental Auditing

1. General Policy

EPA will not promise to forgo inspections, reduce enforcement responses, or offer other such incentives in exchange for implementation of environmental auditing or other sound environmental management practices. Indeed, a credible enforcement program provides a strong incentive for regulated entities to audit.

Regulatory agencies have an obligation to assess source compliance status independently and cannot eliminate inspections for particular firms or classes of firms. Although environmental audits may complement inspections by providing self-assessment to assure compliance, they are in no way a substitute for regulatory oversight. Moreover, certain statutes (e.g., RCRA) and Agency policies

establish minimum facility inspection frequencies to which EPA will adhere.

However, EPA will continue to address environmental problems on a priority basis and will consequently inspect facilities with poor environmental records and practices more frequently. Since effective environmental auditing helps management identify and prompt correct actual or potential problems, audited facilities' environmental performance should improve. Thus, while EPA inspections of self-auditing facilities will continue, to the extent compliance performance is consistent in setting inspection priorities, facilities with a good compliance history may be subject to fewer inspections.

In fashioning enforcement responses to violations, EPA policy is to take into account, on a case-by-case basis, the honest and genuine efforts of regulated entities to avoid and promptly correct violations and underlying environmental problems. When regulated entities take reasonable precautions to avoid noncompliance, expeditiously correct underlying environmental problems discovered through audits or other means, and implement measures to prevent their recurrence, EPA may exercise its discretion to consider such actions as honest and genuine efforts to assure compliance. Such consideration applies particularly when a regulated entity promptly reports violations or compliance data which otherwise were not required to be recorded or reported to EPA.

2. Audit Provisions as Remedies in Enforcement Actions

EPA may propose environmental auditing provisions in consent decrees and in other settlement negotiations where auditing could provide a remedy for identified problems and reduce the likelihood of similar problems recurring in the future.⁵ Environmental auditing provisions are most likely to be proposed in settlement negotiations where:

- A pattern of violations can be attributed, at least in part, to the absence or poor functioning of an environmental management system; or
- The type or nature of violations indicates a likelihood that similar noncompliance problems may exist or occur elsewhere in the facility or at other facilities operated by the regulated entity.

³ An "environmental audit report" is a written report which candidly and thoroughly presents findings from a review, conducted as part of an environmental audit as described in section II.A., of facility environmental performance and practices. An audit report is not a substitute for compliance monitoring reports or other reports or records which may be required by EPA or other regulatory agencies.

⁴ See, for example, "Duties to Report or Disclose Information on the Environmental Aspects of Business Activities," Environmental Law Institute report to EPA, final report, September 1985.

⁵ EPA is developing guidance for use by Agency negotiators in structuring appropriate environmental audit provisions for consent decrees and other settlement negotiations.

Through this consent decree approach or other means, EPA may consider encouraging effective auditing by publicly owned sewage treatment works (POTWs). POTWs often have compliance problems related to operation and maintenance procedures which can be addressed effectively through the use of environmental auditing. Under its National Municipal Policy, EPA already is requiring many POTWs to develop composite correction plans to identify and correct compliance problems.

C. Environmental Auditing at Federal Facilities

EPA encourages all federal agencies subject to environmental laws and regulations to institute environmental auditing systems to help ensure the adequacy of internal systems to achieve, maintain and monitor compliance. Environmental auditing at federal facilities can be an effective supplement to EPA and state inspections. Such federal facility environmental audit programs should be structured to promptly identify environmental problems and expeditiously develop schedules for remedial action.

To the extent feasible, EPA will provide technical assistance to help agencies design and initiate programs. Where appropriate, EPA will enter into agreements with other agencies to clarify the respective roles, responsibilities and commitments of each agency in conducting and responding to federal facility environmental audits.

With respect to inspections of self-audited facilities (see section III.B.1 above) and requests for audit reports (see section III.A above), EPA generally will respond to environmental audits by federal facilities in the same manner as it does for other regulated entities, in keeping with the spirit and intent of Executive Order 12088 and the EPA *Federal Facilities Compliance Strategy* (January 1984, update forthcoming in late 1986). Federal agencies should, however, be aware that the Freedom of Information Act will govern any disclosure of audit reports or audit-generated information requested from federal agencies by the public.

When federal agencies discover significant violations through an environmental audit, EPA encourages them to submit the related audit findings and remedial action plans expeditiously to the applicable EPA regional office responsible state agencies, where appropriate even when not specifically required to do so. EPA will review the audit findings and action plans and either provide written approval or

negotiate a Federal Facilities Compliance Agreement. EPA will utilize the escalation procedures provided in Executive Order 12088 and the EPA *Federal Facilities Compliance Strategy* only when agreement between agencies cannot be reached. In any event, federal agencies are expected to report pollution abatement projects involving costs (necessary to correct problems discovered through the audit) to EPA in accordance with OMB Circular A-108. Upon request, and in appropriate circumstances, EPA will assist affected federal agencies through coordination of any public release of audit findings with approved action plans once agreement has been reached.

IV. Relationship to State or Local Regulatory Agencies

State and local regulatory agencies have independent jurisdiction over regulated entities. EPA encourages them to adopt these or similar policies, in order to advance the use of effective environmental auditing in a consistent manner.

EPA recognizes that some states have already undertaken environmental auditing initiatives which differ somewhat from this policy. Other states also may want to develop auditing policies which accommodate their particular needs or circumstances. Nothing in this policy statement is intended to preempt or preclude states from developing other approaches to environmental auditing. EPA encourages state and local authorities to consider the basic principles which guided the Agency in developing this policy:

- Regulated entities must continue to report or record compliance information required under existing statutes or regulations, regardless of whether such information is generated by an environmental audit or contained in an audit report. Required information cannot be withheld merely because it is generated by an audit rather than by some other means.

- Regulatory agencies cannot make promises to forgo or limit enforcement action against a particular facility or class of facilities in exchange for the use of environmental auditing systems. However, such agencies may use their discretion to adjust enforcement actions on a case-by-case basis in response to honest and genuine efforts by regulated entities to assure environmental compliance.

- When setting inspection priorities regulatory agencies should focus to the extent possible on compliance performance and environmental results.

- Regulatory agencies must continue to meet minimum program requirements

(e.g., minimum inspection requirements, etc.).

- Regulatory agencies should not attempt to prescribe the precise form and structure of regulated entities' environmental management or auditing programs.

An effective state/federal partnership is needed to accomplish the mutual goal of achieving and maintaining high levels of compliance with environmental laws and regulations. The greater the consistency between state or local policies and this federal response to environmental auditing, the greater the degree to which sound auditing practices might be adopted and compliance levels improve.

Dated: June 28, 1986.

Lee M. Thomas,
Administrator.

Appendix—Elements of Effective Environmental Auditing Programs

Introduction: Environmental auditing is a systematic, documented, periodic and objective review by a regulated entity of facility operations and practices related to meeting environmental requirements.

Private sector environmental audits of facilities have been conducted for several years and have taken a variety of forms, in part to accommodate unique organizational structures and circumstances. Nevertheless, effective environmental audits appear to have certain discernible elements in common with other kinds of audits. Standards for internal audits have been documented extensively. The elements outlined below draw heavily on two of these documents: "Compendium of Audit Standards" ("1983, Walter Willborn, American Society for Quality Control) and "Standards for the Professional Practice of Internal Auditing" ("1981, The Institute of Internal Auditors, Inc.). They also reflect Agency analyses conducted over the last several years.

Performance-oriented auditing elements are outlined here to help accomplish several objectives. A general description of features of effective, mature audit programs can help those starting audit programs, especially federal agencies and smaller businesses. These elements also indicate the attributes of auditing EPA generally considers important to ensure program effectiveness. Regulatory agencies may use these elements in negotiating environmental auditing provisions for consent decrees. Finally, these elements can help guide states and localities considering auditing initiatives.

An effective environmental auditing system will likely include the following general elements:

I. Explicit top management support for environmental auditing and commitment to follow-up on audit findings. Management support may be demonstrated by a written policy articulating upper management support for the auditing program, and for compliance with all pertinent requirements, including corporate policies and permit requirements as well as federal, state and local statutes and regulations.

Management support for the auditing program also should be demonstrated by an explicit written commitment to follow-up on audit findings to correct identified problems and prevent their recurrence.

II. An environmental auditing function independent of audited activities. The status or organizational locus of environmental auditors should be sufficient to ensure objective and unobstructed inquiry, observation and testing. Auditor objectivity should not be impaired by personal relationships, financial or other conflicts of interest, interference with free inquiry or judgment, or fear of potential retribution.

III. Adequate team staffing and auditor training. Environmental auditors should possess or have ready access to the knowledge, skills, and disciplines needed to accomplish audit objectives. Each individual auditor should comply with the company's professional standards of conduct. Auditors, whether full-time or part-time, should maintain their technical and analytical competence through continuing education and training.

IV. Explicit audit program objectives, scope, resources and frequency. At a minimum, audit objectives should include assessing compliance with applicable environmental laws and evaluating the adequacy of internal compliance policies, procedures and personnel training programs to ensure continued compliance.

Audits should be based on a process which provides auditors: all corporate policies, permits, and federal, state, and local regulations pertinent to the facility; and checklists or protocols addressing specific features that should be evaluated by auditors.

Explicit written audit procedures generally should be used for planning audits, establishing audit scope, examining and evaluating audit findings, communicating audit results, and following-up.

V. A process which collects, analyzes, interprets and documents information sufficient to achieve audit objectives. Information should be collected before and during an onsite visit regarding environmental compliance(1), environmental management effectiveness(2), and other matters (3) related to audit objectives and scope. This information should be sufficient, reliable, relevant and useful to provide a sound basis for audit findings and recommendations.

a. *Sufficient* information is factual, adequate and convincing so that a prudent, informed person would be likely to reach the same conclusions as the auditor.

b. *Reliable* information is the best attainable through use of appropriate audit techniques.

c. *Relevant* information supports audit findings and recommendations and is consistent with the objectives for the audit.

d. *Useful* information helps the organization meet its goals.

The audit process should include a periodic review of the reliability and integrity of this information and the means used to identify, measure, classify and report it. Audit procedures, including the testing and sampling techniques employed, should be selected in advance, to the extent practical, and expanded or altered if circumstances warrant. The process of collecting, analyzing, interpreting, and documenting information should provide reasonable assurance that audit objectivity is maintained and audit goals are met.

VI. A process which includes specific procedures to promptly prepare candid, clear and appropriate written reports on audit findings, corrective actions, and schedules for implementation.

Procedures should be in place to ensure that such information is communicated to managers, including facility and corporate management, who can evaluate the information and ensure correction of identified problems. Procedures also should be in place for determining what internal findings are reportable to state or federal agencies.

VII. A process which includes quality assurance procedures to assure the accuracy and thoroughness of environmental audits. Quality assurance may be accomplished through supervision, independent internal reviews, external reviews, or a combination of these approaches.

Footnotes to Appendix

(1) A comprehensive assessment of compliance with federal environmental regulations requires an analysis of facility performance against numerous environmental statutes and implementing regulations. These statutes include: Resource Conservation and Recovery Act; Federal Water Pollution Control Act; Clean Air Act; Hazardous Materials Transportation Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Safe Drinking Water Act; Federal Insecticide, Fungicide and Rodenticide Act; Marine Protection, Research and Sanctuaries Act; Uranium Mill Tailings Radiation Control Act.

In addition, state and local governments are likely to have their own environmental laws. Many states have been delegated authority to administer federal programs. Many local governments' building, fire safety and health codes also have environmental requirements relevant to an audit evaluation.

(2) An environmental audit could go well beyond the type of compliance assessment normally conducted during regulatory inspections, for example, by evaluating policies and practices, regardless of whether they are part of the environmental system or the operating and maintenance procedures. Specifically, audits can evaluate the extent to which systems or procedures:

1. Develop organizational environmental policies which: a. implement regulatory requirements; b. provide management guidance for environmental hazards not specifically addressed in regulations;
2. Train and motivate facility personnel to work in an environmentally-acceptable manner and to understand and comply with government regulations and the facility's environmental policy;
3. Communicate relevant environmental developments expeditiously to facility and other personnel;
4. Communicate effectively with government and the public regarding environmental incidents;
5. Require third parties working for or on behalf of the organization to follow its environmental procedures.

8. Make proficient personnel available at all times to carry out environmental (including emergency) procedures;
 9. Incorporate environmental protection into written operating procedures;
 10. Apply best management practices and operating procedures, including "good housekeeping" techniques;
 11. Institute preventive and corrective maintenance systems to minimize actual and potential environmental harm;
 12. Utilize best available process and control technologies;
 13. Use most-effective sampling and monitoring techniques, test methods, recordkeeping systems or reporting protocols and minimum legal requirements;
 14. Evaluate causes behind any serious environmental incidents and establish procedures to avoid recurrence;
 15. Exploit source reduction, recycle and reuse potential wherever practical; and
 16. Substitute materials or processes to allow use of the least-hazardous substances possible.
17. Auditors should also assess environmental risks and uncertainties.

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Revised 10/17/86

A REPRESENTATIVE SAMPLE OF
ENVIRONMENTAL AUDITING SETTLEMENTS ACHIEVED TO DATE*

REGION II:

Crompton and Knowles Corporation, Consent Agreement and Final Order (CAFO), II TSCA-PCB-82-0108, 1/28/86. Compliance audit of 28 facilities, covering TSCA PCB requirements, with certification of compliance. EPA attorney: Randy Stein, FTS 264-8157.

REGION V:

BASF Wyandotte Corporation, CAFO, TSCA-V-C-410, 4/25/86. In settlement of a premanufacture notification action under TSCA, BASF agreed to conduct an audit (actually called a "review") of all chemicals subject to TSCA §5 inventory requirements that are produced, imported or used by 13 BASF facilities. BASF also agreed to certify that (1) all chemicals manufactured by or imported/purchased from its parent or an affiliate company are listed on the TSCA Chemical Substances Inventory; and (2) to the best of its knowledge, all chemicals purchased from unrelated parties are listed on the TSCA inventory. EPA attorney: Art Smith, FTS 886-4253.

Chemical Waste Management, Inc. (Vickery, Ohio facility), CAFO, TSCA-V-C-307, RCRA-V-85R-019, 4/5/85. Management audit covering all RCRA and TSCA requirements. Audit also addresses personnel training, spill response, operations and maintenance, interim stabilization, and quality control and assurance. EPA attorneys: Rodger Field, FTS 886-6726; Michael Walker, FTS 475-8697.

Detroit Metropolitan (Wayne County Airport), CAFO, TSCA-V-C-468, 7/30/86. PCB compliance audit of all facilities with certification of compliance and submission of inventory of each facility which specifies general location and quantity of all PCBs and PCB items subject to the requirements of 40 CFR Part 761. EPA attorney: Dorothy Attermayer, FTS 886-6776.

Michigan Department of Mental Health, CAFO, TSCA-V-C-231, 1/4/85. PCB compliance audit of all facilities, with certification of compliance. EPA attorney: Michael Walker, FTS 475-8697.

Michigan Department of Corrections, CAFO, TSCA-V-C-187, 10/9/83. PCB compliance audit of all facilities, with certification of compliance. EPA attorney: Michael Walker, FTS 475-8697.

Owens-Corning Fiberglas Corporation, CAFO, TSCA-V-C-101, 6/8/84. PCB compliance audit of 63 facilities, with certification of compliance. EPA attorney: Michael Walker, FTS 475-8697.

* Note: Some of the settlements identified herein may not fall within the strict definition of "environmental auditing" but contain requirements sufficiently similar to auditing to warrant their inclusion.

Potlatch Corporation, CAFO, TSCA-V-C-137, 8/31/83. PCB compliance audit of all facilities, with certification of compliance. EPA attorney: David Sims, FTS 353-2094.

Ren Plastics, an operating unit of Ciba-Geigy Corp. (E. Lansing, Michigan), CAFO, TSCA-V-C-411, 2/12/86. CAFO requires review of the chemicals manufactured by Ciba-Geigy plants with certification that all chemicals are on the TSCA inventory. Respondent also agreed to conduct an environmental seminar for plant personnel with a section on TSCA compliance; respondent intends to continue refining its employee training program. EPA attorney: Dorothy Attermeyer, FTS 886-6776.

REGION VI:

USA v. Georgia-Pacific Corporation, Nos. 84-457-B and 85-136-B (D.L.A., entered 2/6/86). Clean Air Act Consent Decree requires implementation of compliance plan produced by presettlement audit, covering CAA National Emissions Standard for vinyl chloride. EPA attorney: Elliott Gilberg, FTS 382-2864.

REGION IX:

Chemical Waste Management, Inc. (Kettleman Hills, California facility), CAFO, RCRA-0984-0037, TSCA-09-84-0009, 11/7/85. Management audit covering all RCRA and TSCA requirements. Audit also addresses personnel training, spill response, operations and maintenance, interim stabilization, and quality control and assurance. EPA attorneys: Bill Wick, FTS 454-8039; Keith Onsdorff, FTS 382-3072.

REGION X:

Allstate Insurance Company, CAFO, X83-09-09-2614, 5/25/84. PCB audit of 140 buildings nationwide, formulation of PCB inspection plan and guidelines to be distributed to facility managers, and follow-up training conferences and review of program implementation. EPA attorney: Ted Rogowski, FTS 399-1185.

Bonneville Power Administration, Memorandum of Agreement with EPA, 2/20/85. MOA provides for: (1) training of personnel conducting TSCA inspections, CERCLA preliminary assessments, and site investigations; (2) conduct of environmental audits covering TSCA PCB requirements; (3) testing and evaluation of facilities to determine status of compliance with TSCA and to assess threatened or actual release of "hazardous substances" as defined by CERCLA; and (4) remedial actions to be taken based upon risk assessment that utilizes criteria and information in the National Contingency Plan. EPA attorney: Ted Rogowski, FTS 399-1185.

Chem Security Systems, Inc. (Arlington, OR), CAFOs, TSCA 1085-07-42-2615P, 12/26/85; and RCRA 1085-06-08-3008P, 12/2/85. Four compliance audits (performed quarterly over a one-year period), covering all RCRA requirements and PCB requirements under TSCA. EPA attorney: Barbara Lithier, FTS 399-1222.

Crown Zellerbach Corporation, CAFO, X83-06-08-2614, 11/30/83. Settlement provides for refinement of existing corporate-wide compliance program for TSCA PCB requirements, including certification of compliance. EPA attorney: Ted Rogowski, FTS 399-1185.

Roseburg Lumber Company, CAFO, X83-05-02-2614, 1/10/85. Settlement provides for development of a training program and manual describing PCB compliance requirements and procedures; and a program to bring 12 facilities into full compliance with TSCA PCB requirements within one year of settlement. EPA attorney: Ted Rogowski, FTS 399-1185.

Washington State University, CAFO, X83-05-02-2614, 5/30/84. Settlement provides for development of guidance manual for employees regarding proper handling of PCBs, followed by training sessions to ensure employees' familiarity with PCB compliance procedures. EPA attorney: Ted Rogowski, FTS 399-1185.

HEADQUARTERS:

American Petrofina Company of Texas, Nos. 1217 and 1293, 9/5/85. Consolidated Clean Air Act Settlement Agreement requires institution of annual visitation program by Respondent to verify the existence of proper unleaded gasoline handling procedures at all branded gasoline retail outlets. EPA attorneys: Rich Kozlowski, FTS 382-2633; Rich Ackerman, FTS 382-4410.

Ashland Oil, Inc. (Catlettsburg, KY refinery), No. _____ (E.D. Kentucky, entered _____). Clean Water Act consent decree requires the performance of a "Wastewater Treatment System Engineering Study" by an independent party and the implementation of those recommendations agreed upon by the parties. Settlement also mandates the commencement of a "Best Management Practices Study" in order to minimize potential significant releases; includes the development of a toxicity testing and control plan and establishes a stipulated penalty schedule for daily and monthly violations of effluent limits contained in Defendant's NPDES permit. EPA attorney: Joseph Moran, FTS 475-8185.

BASF Systems Corporation, CAFO, TSCA-85-H-04, 5/28/86. Environmental management audit and development of procedures for handling chemical substances imported from BASF's German parent corporation. BASF will pay a stipulated penalty of \$10,000 per "safe" chemical not listed on the TSCA Chemical Inventory. EPA will apply the TSCA PMN penalty policy to violations for unregistered "bad" chemicals discovered in the "review" process. EPA attorney: Michael Walker, FTS 475-8697.

Chapman Chem. Co., et al., FIFRA 529, et al., Filed 9/30/85.
The industry parties to the settlement agreement agreed to implement and participate in a voluntary Consumer Awareness Program to provide users of treated wood products with use, handling, and precautionary information. The focus of the program is a Consumer Information Sheet which contains language approved by the Agency. Industry agreed to conduct an audit of the program within a year after settlement and to submit the results of the audit to EPA within 30 days of its completion. EPA attorney: Cara Jablon, FTS 382-2940.

Chemical Waste Management, Inc. (Emelle, Alabama facility), CAFO, TSCA-84-H-03, 12/19/84. Management audit covering all RCRA and TSCA requirements. Audit also addresses personnel training, spill response, operations and maintenance, interim stabilization, and quality control and assurance. EPA attorneys: Keith Onsdorff, FTS 382-3072; Alex Varela, FTS 475-8690; Arthur Ray, FTS 382-3050.

Conoco Inc. and Kayo Oil Company, CAA (211)-449, 520, 596, 709, and 710, 8/31/83. Settlement Agreement requires (or confirms): (1) revision of Conoco's Jobber Franchise Agreement to include provision for unleaded gasoline sampling on a quarterly basis at each Conoco Jobber retail outlet; (2) all drivers of Conoco company cars to certify that no tampering has occurred which would allow the introduction of leaded gasoline into a vehicle requiring unleaded gasoline; (3) posting of public information notices designed to inform Kayo customers of problems related to fuel switching; and (4) training to inform Kayo employees of EPA unleaded fuels regulations. EPA attorneys: Rich Kozlowski, FTS 382-2633; Rich Ackerman, FTS 382-4410.

Department of Defense, Federal Facility Compliance Agreement, 12/30/83. Agreement covers all DoD facilities where PCBs are stored for disposal; establishes compliance plan designed to achieve and maintain compliance with all applicable PCB storage and disposal requirements. EPA attorney: Deeohn Ferris, FTS 475-8690.

Diamond Shamrock Corporation, CAFO, TSCA-85-H-03, 7/15/85. Compliance audit of 43 facilities, covering all TSCA requirements. EPA attorneys: Deeohn Ferris, FTS 475-8690; Bob Pittman, FTS 475-8690.

General Electric Co. (Waterford, NY facility), No. 84-CV-681 (N.D.N.Y., entered _____). Clean Water Act consent decree requires the implementation of an engineering study to insure compliance with Defendant's N/SPDES permit. Settlement also requires monthly progress reports to be submitted to EPA with provisions for stipulated civil penalties for discharge violations. EPA attorney: Joseph Moran, FTS 475-8185.

Mac Oil Company d/b/a Circle Oil, No. FOSD-1908, 5/21/85. Clean Air Act Settlement Agreement requires: (1) institution of an unleaded gasoline sampling and testing program at all facilities receiving unleaded gasoline from Respondent; (2) inspections of the gasoline pumps at all facilities to which Respondent delivers gasoline to determine compliance with nozzle, label and warning sign requirements; and (3) maintenance of a company unleaded gasoline policy that informs all employees, agents and common carriers of gasoline handling and compartment labeling procedures. EPA attorney: Dean Uhler, FTS 382-2947.

National Convenience Stores, Inc. d/b/a Stop 'n Go, Nos. FOSD-1140 and FOSD-1404, 8/16/84. Consolidated Settlement Agreement requires: (1) institution of a program for compliance with EPA unleaded fuels regulations at all retail gasoline outlets that Respondent operates under any name, including periodic verification that nozzle requirements are met; and (2) submission to EPA of a Certificate of Compliance. EPA attorney: Rich Kozlowski, FTS 382-2633.

Phillips Petroleum Company, Consolidated Clean Air Act Settlement Agreement, 3/11/85. Settlement requires Phillips to: (1) establish, implement and maintain a program for unleaded gasoline quality assurance among its branded marketers and retailers; (2) conduct a threephase program of sampling unleaded gasoline at all branded retail outlets in the United States; (3) conduct annual inspections of ten percent of its branded retail outlets in the United States for compliance with EPA unleaded gasoline regulations; (4) at the time of contract renewal, review with its marketers and retailers their contractual obligations pertaining to the sale, handling, and distribution of unleaded gasoline; and (5) conduct a review of its Unleaded Gasoline Quality Assurance Program after the first year of operation and submit a written report to EPA assessing the program's effectiveness in improving the quality of unleaded gasoline and reducing the potential or actual number of violations of the regulatory limits for lead. EPA attorney: Rich Kozlowski, FTS 382-2633.

R.I. Marketing, Inc., No. FOSD-1611, 10/5/84. Clean Air Act Settlement Agreement requires institution of a fuel switching preventative action program, at each of approximately 200 retail outlets, designed to prevent leaded gasoline from being introduced into vehicles requiring unleaded fuel. EPA attorney: Rich Kozlowski, FTS 382-2633.

Savoca's Service Center, Inc., No. FOSD-2101, 10/17/85. Clean Air Act Settlement Agreement requires institution of a fuel switching preventative action program, at all retail outlets, designed to prevent leaded gasoline from being introduced into vehicles requiring unleaded fuel. EPA attorney: Rich Kozlowski, FTS 382-2633.

Union Carbide Corporation, CAFO, TSCA-85-H-06, 2/26/86. Settlement provides for development of a training program emphasizing pre-manufacture notification requirements under TSCA, followed by a test program to monitor responses for compliance with TSCA. EPA attorney: Alex Varela, FTS 475-8690.

United American Fuels, Inc., No. FOSD-1578, 12/18/84. Clean Air Act Settlement Agreement requires implementation of a fuel additive quality control and testing program. EPA attorney: Rich Kozlowski, FTS 382-2633.

USA v. Parma, Ohio, No. C-85-208, (N.D. Ohio, February 28, 1985). Clean Air Act Consent Judgment requires Defendant to: (1) replace catalytic converters that had been removed illegally; (2) inspect (periodically for two years) all city vehicles for tampering with emission controls; (3) tune-up and test (periodically for two years) all city vehicles for emissions; (4) report all tampering found to EPA and take appropriate remedial measures; (5) train mechanics in compliance with EPA standards; (6) distribute pamphlets discussing tampering and fuel switching to all households in Parma, Ohio; and (7) display for one year posters cautioning against tampering and fuel switching. EPA attorney: Debra Rosenberg, FTS 382-2649.

USA v. State of Maine, No. 84-0152-B (D. Maine, November 19, 1985). Clean Air Act Consent Decree requires State to (1) inspect all Maine Forest Service vehicles for tampering with emission control devices, and correct deficiencies; (2) inspect each gasoline fueling facility owned or operated by the Maine Department of Conservation for compliance with label, notice and nozzle size requirements, and correct deficiencies; (3) publicize to Maine Forest Service personnel and the public the importance of complying with mobile source requirements; and (4) implement fully the catalytic converter and inlet restrictor inspection program mandated by State law, and audit at least 90 percent of licensed inspection facilities to verify compliance. EPA attorney: Richard Friedman, FTS 382-2940.

Note: The settlements identified herein relating to mobile source enforcement under the Clean Air Act are representative of approximately 200 such settlements that have been achieved to date.

A Note Concerning Application of the Model Provisions

Attachments C-G represent model provisions for the incorporation of environmental auditing requirements within enforcement settlements. These models are based upon medium-specific settlements and necessarily reflect the circumstances surrounding those settlements. Accordingly, Agency negotiators should not hesitate to alter them as necessary to meet the needs of a particular case. An attempt has been made to fashion the models in such a manner that they can be used in any enforcement settlement; however, some language has been retained which applies to only one or two EPA programs. Even where specific language is found to be inapposite, the general headings under which such language is found should provide helpful guidance to Agency personnel in identifying the categories of issues which a particular type of auditing settlement should address.

MODEL ENVIRONMENTAL COMPLIANCE AUDIT PROVISION FOR CONSENT
DECREEES OR AGREEMENTS

A.1. Defendant/Respondent shall, within sixty days after the effective date of this Decree/Agreement [and where a continuing audit requirement is appropriate, add: and not less often than annually thereafter for a five-year period], audit the status of [applicable statutory] compliance at the [site of facility(ies)] and take prompt remedial action against all violations found.

A.2. Defendant/Respondent shall, within sixty days after completion of the compliance audit required by paragraph 1, submit to EPA's [name of EPA office overseeing compliance with Decree/Agreement] a certification that, to the best of its knowledge, Defendant/Respondent is in compliance with all [applicable statutory and regulatory] requirements or has developed a schedule for achieving compliance subject to EPA approval.

A.3. Nothing in this Decree/Agreement shall preclude EPA from instituting enforcement actions against Defendant/Respondent for any violations of [applicable statutory and regulatory] requirements which are not cited within the Complaint giving rise to this Decree/Agreement.

MODEL ENVIRONMENTAL MANAGEMENT AUDIT PROVISION FOR CONSENT
DECREEES OR AGREEMENTS

B.1. Defendant/Respondent shall propose to EPA's [name of EPA office overseeing compliance with Decree/Agreement] by written submittal to [name of Agency contact] within thirty (30) days of the effective date of this Decree/Agreement, the scope of work for the services of a [third party or internal] auditor who shall be expert in environmental auditing, environmental management systems and [applicable statutory program(s)] management operations. Such auditor shall be independent of and in no way responsible to production management. This scope of work and auditor shall be agreed upon by EPA and Defendant/Respondent in writing, prior to the auditor's commencing the performance of the professional services more fully set forth below. The auditor will be retained and the scope of work will be designed to review and make recommendations regarding the improvement of Defendant's/Respondent's environmental compliance and management policies, practices, and systems at the [site of facility(ies)] and in the Defendant's/Respondent's corporate offices having responsibility for supervision of compliance activities at such facility(ies).

2. Within one hundred twenty (120) days after agreement upon the scope of work and the auditor, the auditor shall submit a written Environmental Audit Report to the Defendant/Respondent. This Report shall:

a. Identify and describe the existing facility environmental management operations and the corporate offices responsible for overall company-wide environmental compliance and management systems, policies and prevailing practices as they affect [applicable statutory and regulatory] compliance at the [site of facility(ies)].

b. Evaluate such operations and systems, practices and policies and identify and describe fully the perceived weaknesses in such operations and systems, practices and policies by comparing them, to the extent practicable, to:

i. their ability to promote compliance with [applicable statutory and regulatory] requirements;

ii. the existing practices, programs and policies of other [applicable industry] corporations operating within the continental United States, including consideration of the available literature and consultant's experience pertinent to regulatory compliance programs, practices and policies currently operative in the [applicable industry] in the continental United States;

iii. the history of [facility] operations in terms of the facility's(ies') compliance programs, compliance record

and environmental management practices over the previous five years [or longer if necessary or relevant].

The auditor shall apply its expertise and judgment to the foregoing information, using such factors as the auditor believes to be relevant and appropriate, which factors shall be stated in the report.

c. Based on the evaluation required in paragraphs 2.a. and b. above, the auditor shall identify and describe fully with supporting rationales the perceived areas, if any, where Defendant's/Respondent's environmental management systems, practices and policies may be improved as they affect the [facility(ies)] regarding [applicable statutory] compliance obligations, listing specific options for any improvements at the [facility(ies)] in the following areas:

i. environmental compliance program management operation, staffing, education and experience requirements.

ii. compliance management budget, lines of authority to Defendant's/Respondent's corporate offices responsible for overall company-wide environmental compliance and management systems, policies, and practices, and relationship to the operating facility(ies) manager.

iii. personnel training for individual employee compliance obligations and [applicable medium-specific activities].

iv. Operations and Maintenance (O&M) procedures for [applicable medium-specific pollution control] equipment.

v. evaluation of [applicable industry] operations and pollution control equipment in terms of adequacy of design and compatibility with [applicable medium-specific substances] being passed through such equipment.

vi. quality and thoroughness of implementation of all waste and wastewater [or other pollutant source] analysis plans for both incoming and outgoing waste [or other pollutant] streams, whether directly discharged, emitted, released to the ambient environment, or conveyed off-site in bulk shipments.

vii. preparation of Quality Assurance and Quality Control programs for sampling and analysis and for environmental testing procedures, including [facility(ies)] laboratories and contract laboratories for [facility(ies)].

viii. preparation of records needed to provide the [facility(ies)] management with an adequate data base to accurately determine compliance with all applicable statutory and regulatory requirements, with particular attention to waste [or other

pollutant] generation (including quantity and chemical composition), movements, treatment, and ultimate disposition by location of waste [or other pollutant] source, handling points and final disposition. This evaluation shall encompass proposals for state-of-the-art data management systems providing timely access to all of the above records to be maintained by an onsite computer.

ix. preparation of self-monitoring reports required to be filed with the State and EPA.

x. preparation and review of Incident Reports evaluating causes of [applicable medium-specific pollution control] equipment malfunctions, improper [applicable medium-specific substances] handling, or breakdowns, with specific recommendations for corrective steps and preventive O&M, along with procedures for reporting these recommendations to corporate headquarters.

3. Within 30 days after Defendant's/Respondent's receipt of the Audit Report, Defendant/Respondent shall submit to EPA that portion of the Audit Report which contains the recommendations of the auditor, together with a report of Defendant's/Respondent's good faith evaluation of each option it has selected for adoption and the reasons for rejecting other options. The report by Defendant/Respondent shall set forth the specific actions the company shall take and a schedule, not to exceed sixty (60) days [or longer if necessary] from the date that EPA receives and evaluates the schedule, for implementation of the recommendations adopted by Defendant/Respondent.

4. Any failure by Defendant/Respondent to meet the schedule for implementing the audit program set forth in this Decree/Agreement shall result in stipulated penalties of [\$_____] (in addition to whatever sanctions the court/ALJ may impose for contempt), payable by Defendant/Respondent to the U.S. Treasury, for each day such schedule is not met.

B. Nothing in this Decree/Agreement shall preclude EPA from instituting enforcement actions against Defendant/Respondent for any violations of [applicable statutory and regulatory] requirements which are not cited within the Complaint giving rise to this Decree/Agreement.

MODEL ENVIRONMENTAL COMPLIANCE AND MANAGEMENT AUDIT PROVISION
FOR CONSENT DECREES AND AGREEMENTS

C.1. Defendant/Respondent shall conduct environmental audits of its facility(ies) [of appropriate frequency and duration] in accordance with the Audit Workplan attached hereto as Exhibit B [company specific; not included]. The first such audit shall commence on or about three months from the effective date of this Decree/Agreement. Each of the audits shall be completed in accordance with the schedule set forth in the Audit Workplan.

2. The performance standard of each such audit is to complete a detailed and professional investigation as set forth in the Audit Workplan of the facility's recordkeeping practices and environmental management operations during the [applicable period]. In accordance with the Audit Workplan, the following audit reports shall be prepared and submitted, with copies of supporting documentation, to EPA within thirty days following the initiation of each such audit:

a. A report on all [pollutants] whose locations (as reported in the facility records) differ from their observed physical location or whose physical locations cannot be corroborated by existing records kept at the facility.

b. A report of all quantity variations (of 10% or more by volume or weight, or any variation in piece count) between [pollutants] received and [pollutants] disposed of at the facility.

c. A report on Defendant's/Respondent's activities at the facility in terms of whether or not they comply with the procedures required under the [Pollutant] Analysis Plan for [pollutant] acceptance. Defendant/Respondent shall include with this report the results of a minimum of three laboratory (including Defendant's/Respondent's laboratory) analyses of blind standards (i.e., pre-analyzed samples whose concentrations are unknown to the laboratories participating in the audit) to be provided by the audit team to evaluate Defendant's/Respondent's ability to quantify representative hazardous constituents in various media.

d. A report of any observed deviations from Defendant's/Respondent's written operating procedures, including documentation on any untimely response to the repair and/or replacement of deteriorating or malfunctioning [pollutant] containers, structures, or equipment.

e. Recommendations as to potential significant improvements and/or modifications which should be made to Defendant's/Respondent's operating procedures to achieve compliance with [applicable statutory and regulatory] requirements.

3. Nothing in this Decree/Agreement shall preclude EPA from instituting enforcement actions against Defendant/Respondent for any violations of [applicable statutory and regulatory] requirements which are not cited within the Complaint giving rise to this Decree/Agreement.

MODEL ENVIRONMENTAL COMPLIANCE AND MANAGEMENT AUDIT PROVISION
FOR CONSENT DECREES AND AGREEMENTS*

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* This provision is only appropriate for a party with an extensive history of noncompliance. It requires a high level of Agency oversight. Based on a draft settlement document, the provision reflects a pro-Agency bias and thus is more susceptible than other model provisions to the give and take of the negotiation process. While the provision only addresses requirements under RCRA and TSCA, audit provisions under other statutes may be crafted by using as a framework the headings contained in this provision.

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MODEL EMERGENCY ENVIRONMENTAL MANAGEMENT REORGANIZATION PROVISION
FOR CONSENT DECREES OR AGREEMENTS

E.1. The objective of this provision is to provide a management structure at the corporate headquarters level that will ensure that comprehensive environmental policies and procedures are developed by top management and fully implemented company-wide at all facilities.

2. Defendant/Respondent shall propose to EPA's [name of EPA office overseeing compliance with Decree/Agreement] by written submittal to [name of Agency contact] within thirty (30) days of the effective date of this Decree/Agreement, a plan for reorganization of the corporate management structure with respect to environmental affairs. This reorganization proposal shall be agreed upon by EPA and Defendant/Respondent in writing, prior to implementation of the reorganization.

a. The management plan shall provide for the creation of a new position of Director, Environmental Affairs [or other appropriate title] to exercise the responsibilities set forth herein. The Director, Environmental Affairs shall report directly to [a corporate Vice President or other appropriate top management official not directly responsible for manufacturing/production activities]. The position shall at all times be filled by an experienced executive with a background in [appropriate industrial field] and in environmental management and compliance.

b. It shall be the responsibility of the Director, Environmental Affairs to develop appropriate corporate environmental policies and procedures and to oversee their implementation at all company facilities to ensure compliance with applicable Federal, State and local environmental statutes and regulations. In the development of such policies and procedures, the recommendations of the environmental audit conducted at the [facility] by an outside consultant as described herein shall be given full consideration.

c. Defendant/Respondent shall also establish such additional technical and support positions reporting directly to the Director, Environmental Affairs as are necessary to meet the objective of this provision. Neither the Director nor staff shall be assigned additional responsibilities not related to environmental compliance. Defendant/Respondent shall provide adequate budgetary support to the environmental staff.

3. Within ninety (90) days of EPA's approval of the environmental management plan, the company shall appoint the Director, Environmental Affairs and appropriately qualified staff.

4. Within two hundred seventy (270) days of EPA's approval of the environmental management plan, the Director, Environmental

Affairs shall complete development and begin the implementation of appropriate corporate environmental policies and procedures to meet the objective of this provision.

5. Within eighteen (18) months of the effective date of this Decree/Agreement, Defendant/Respondent shall fully implement the corporate environmental policies and procedures at all company facilities. This shall include any necessary organizational or personnel changes at the individual facility level.

6. Recognizing the corporate responsibility to maintain compliance with all applicable environmental statutes and regulations, Defendant/Respondent agrees to maintain a permanent corporate environmental management staff. The organization, makeup and functions of this staff may be modified from time to time as dictated by changes in corporate facilities or operations or the requirements of environmental statutes and regulations.

DEFENDANT'S/RESPONDENT'S FACILITIES

- 1.
 - 2.
 - 3.
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-

1. Purposes of Consent Decree/Agreement. In order to achieve the mutual goal of ensuring full compliance with applicable environmental laws, regulations, and permits by Defendant's/Respondent's active facilities in an efficient and coordinated manner, Defendant/Respondent and EPA hereby enter into a Consent Decree/Agreement under which:

(1) independent auditors to be retained by EPA and paid for by Defendant/Respondent shall, subject to EPA oversight, audit each facility and report to both parties on their assessment of Defendant's/Respondent's compliance with RCRA and TSCA and their implementing permits, rules and regulations;

(2) the independent auditors shall perform an analysis of Defendant's/Respondent's environmental management systems, practices and policies, as they affect inter-facility and intra-facility transactions (as defined in Paragraphs 5(11) and 5(12) of this Decree/Agreement);

(3) Defendant/Respondent shall pay penalties for violations of the aforementioned statutes, permits, rules and regulations according to the Penalty Schedule set forth as Appendix 2 to this Decree/Agreement; and

(4) EPA shall accept the penalties provided in Appendix 2 as full and complete settlement and satisfaction of any of its civil claims for violations detected by the audit firm (with certain exceptions as set forth in Paragraphs 23, 24, and 25, of this Decree/Agreement).

TERMS OF SETTLEMENT

DEFINITIONS

5. Whenever the following terms are used in this Decree/Agreement, the definitions specified herein shall apply:

(1) Compliance Report and Plan: A document to be submitted by Defendant/Respondent to EPA, pursuant to Paragraph 19 of this Decree/Agreement, which:

- (a) describes in full detail every corrective action taken in response to a Facility Audit Report;
- (b) in the case of violations which are not corrected within 60 days of submittal of the Facility Audit Report, describes every action to be taken in response to any

violations or findings in the Facility Audit Report; and

- (c) certifies under oath the accuracy of information contained in the Compliance Report and Plan.

(2) Confidential Business Information (CBI)

- (a) Information/Documents Determined Not to Be Entitled to CBI Protection. It is agreed between the parties that portions of documents containing the following information shall not be eligible for CBI treatment:
 - (i) The fact that any chemical waste was disposed of at any Defendant/Respondent facility.
 - (ii) The location of disposal of any chemical waste at any Defendant/Respondent facility.
 - (iii) Any information contained or referred to in any manifest for any chemical waste disposed of at any Defendant/Respondent facility.
 - (iv) The identity and quantity of any chemical waste disposed of at any Defendant/Respondent facility.
 - (v) Any monitoring data or analysis of monitoring data pertaining to disposal activities at any Defendant/Respondent facility, including monitoring data from any well, whether or not installed pursuant to 40 C.F.R. Part 265, Subpart F, or 40 C.F.R. Part 254, Subpart F (RCRA Groundwater Monitoring Requirements).
 - (iv) Any permit applications submitted to EPA or to any state pursuant to federal or state statute or regulation.
 - (vii) Any information regarding planned improvements in the treatment, storage or disposal of chemical wastes at any Defendant/Respondent facility.
 - (viii) Any hydrogeologic or geologic data.
 - (ix) Any groundwater monitoring data.

- (x) Any contingency plans, closure plans, or post-closure plans.
- (xi) Any waste analysis plans.
- (xii) Any training and/or inspection manuals and schedules.
- (xiii) Any point source discharge or receiving water monitoring data.

(b) The status of information not listed in Section (a) above shall be determined in accordance with 40 CFR Part 2, which provides for CBI treatment of information where:

- (i) Defendant/Respondent has taken reasonable measures through the issuance and observance of companywide policies and procedures to protect the confidentiality of the information, and that it intends to continue to take such measures;
- (ii) The information is not, and has not been, reasonably obtainable without Defendant's/Respondent's consent by other persons (other than governmental bodies which are bound by and observing Defendant's/Respondent's claims of CBI as to that information) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);
- (iii) Disclosure of the information is likely to cause substantial harm to Defendant's/Respondent's competitive position.

(3) Corporate Management Report and Plan: A document submitted by Defendant/Respondent to EPA, pursuant to Paragraph 27 of this Decree/Agreement, describing in full detail what actions Defendant/Respondent has taken or will take to implement the findings of the Corporate Management Systems Report.

(4) Corporate Management Systems Report: A fully integrated separate report prepared pursuant to the Corporate Management Systems Report Protocol set forth in Appendix 3 of this Decree/Agreement and submitted by Defendant/Respondent to EPA pursuant to Paragraph 26 of this Decree/Agreement.

(5) Corrective Action: Any action taken by Defendant/Respondent in order to come into compliance with any federal, state or local statutory or regulatory requirement for the treatment, storage, or disposal of any Hazardous Substance.

(6) Facility Audit Reports: Reports to be submitted by the Audit Firm to EPA, pursuant to Paragraph 19 of this Decree/Agreement, which:

- (a) describe in detail the procedures followed in the facility audit, the facility itself, the regulatory history of the facility, and the facility's current compliance status;
- (b) describe in detail each violation detected during the audit;
- (c) provide any other information which, in the judgment of the Audit Firm, merits Agency review;
- (d) for each violation reported, provide the relevant statutory or regulatory section; the particular area of the facility where the violation was found (if appropriate); the dates during which the violation occurred or existed (if it can reasonably be determined); and any other relevant or appropriate information.

(7) Hazardous Substances: Those materials meeting the definition contained in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., §9601(14).

(8) Hazardous Wastes: Those materials meeting the definition contained in 42 U.S.C. §6903(5) and the regulations promulgated at 40 C.F.R. Part 261.

(9) Independent Audit Firm ("Audit Firm"): A firm selected by EPA, pursuant to Paragraph 6 of this Decree/Agreement, for the purpose of performing the Facility Compliance and Management Systems Audits described herein. For the purpose of this Decree/Agreement, the Independent Audit Firm must exercise the same independent judgment that a Certified Public Accounting firm would be expected to exercise in auditing a publicly held corporation. In addition, the Independent Audit Firm must:

- (a) not own stock in Defendant/Respondent or any parent, subsidiary, or affiliated corporation;
- (b) have no history of participation in any previous contractual agreement with Defendant/Respondent or any parent, subsidiary, or affiliated corporation; and
- (c) have no other direct financial stake in the outcome of the Facility Compliance or Management Systems Audits outlined in this Decree/Agreement.

(10) Inter-facility Transactions: Any letters, contracts, memoranda, or other communications between two or more offices or facilities owned or operated by Defendant/Respondent.

(11) Intra-facility Transactions: Any letters, contracts, memoranda, or other communications between two or more locations or offices at a single Defendant/Respondent Facility.

(12) Manifest: The shipping document EPA form 8700-22 and, if necessary, EPA form 8700-22A (as required by 40 C.F.R. Part 262) or equivalent.

(13) New Violation: Any statutory or regulatory violation not reported in the Facility Inspection Report.

(14) Plaintiff: The United States of America, for the Administrator of the United States Environmental Protection Agency (collectively, "the Agency" or "EPA").

(15) Records: Any Defendant/Respondent or consultant report, document, writing, photograph, tape recording or other electronic means of data collection and retention which bears upon Defendant's/Respondent's compliance with EPA, state and local rules and regulations.

(16) Facility: Any facility which treats, stores, or disposes of hazardous waste as those terms are defined at 42 U.S.C. §§6903(3), 6903(33), and 6903(34).

(17) Uncorrected Violation: Any violation reported in a Facility Inspection Report which remains uncorrected for 60 days or more after the completion and submission of the Facility Inspection Report pursuant to Paragraph 19 of this Decree/Agreement.

GENERAL AUDIT PROCEDURES

6. Preliminary Matters

(1) Scope of Work

(a) Defendant/Respondent shall submit to the Agency within thirty (30) days of the effective date of this Decree/Agreement the Scope of Work for audits of the Defendant/Respondent facilities listed in Appendix 1 for RCRA and TSCA violations. EPA shall have thirty (30) days from the date of receipt of this Scope of Work and proposed Audit Firm to submit to Defendant/Respondent in writing any proposed modifications in the scope of work.

(b) Defendant/Respondent shall have fifteen (15) days from the date of receipt of EPA's proposed modifications within which to submit in writing its comments upon those proposed modifications.

(b) Within ten (10) days of receipt of Defendant's/Respondent's comments, the Agency shall issue its final decision as to the Scope of Work, which shall be binding upon Defendant/Respondent.

(2) Establishment of Trust

(a) Within thirty (30) days of the date of this Decree/Agreement, Defendant/Respondent shall establish an irrevocable trust fund ("Trust"), the form and text of which shall be approved by EPA. If no fund is approved by EPA within thirty (30) days of the date of this Decree/Agreement, a form supplied by EPA shall be used. The Trustee shall be a bank selected by Defendant/Respondent, which must be approved by EPA.

(b) The Administrator of EPA shall have special power of appointment (and the only power of appointment) over all income and all assets of the Trust. That power may be exercised only to make appointments of funds in accordance with this Decree/Agreement. If, at the conclusion of all tasks set forth in this Decree/Agreement, there remains trust income or assets which have not been appointed by exercise of such special power, then all such remaining unappointed assets shall be delivered forthwith to Defendant/Respondent. Defendant/Respondent shall fund the Trust by placing \$ _____ in the hands of the Trustee within forty-five (45) days after the date of this Decree/Agreement.

(3) Selection of Audit Firm

(a) Within forty-five (45) days after the date of this Decree/Agreement, EPA shall notify Defendant/Respondent of its selection of a proposed Audit Firm. Defendant/Respondent shall have fifteen (15) days from the date of receipt of EPA's proposed Audit Firm to accept, reject, or comment upon this selection. Reasons for which Defendant/Respondent may reject the proposed Audit Firm are limited to lack of sufficient national reputation; inexperience in performing environmental compliance and management audits; inadequate staffing levels; and failure to qualify as an Independent Audit Firm as defined in Paragraph 5(10) of this Decree/Agreement.

(b) In the event EPA and Defendant/Respondent are unable to agree on selection of an Audit Firm, the parties shall submit to Dispute Resolution as set forth in Paragraph 32 of this Decree/Agreement.

7. Audit Seminar. Before the Audit Firm begins the audits, and within 60 days of the date EPA and Defendant/Respondent agree upon the Scope of Work and Audit Firm as described above, the Agency shall conduct a seminar for employees of the Audit Firm who are to conduct the audits. This seminar shall serve the purpose of assuring that the Audit Firm employees who will be conducting the audits are familiar with all protocols required by Agency policies and procedures to be utilized in conducting compliance audits. The Agency may conduct the audit seminar at the National Enforcement Investigations Center (NEIC) near Denver, Colorado or at the Audit Firm's office. The Agency shall not be responsible for transportation, lodging or other costs associated with attendance by the audit firm employees at the seminar.

8. Observation of EPA Protocols. The Audit Firm shall be required by contract with Defendant/Respondent to observe the protocols presented at the audit seminar. Such protocols include but are not limited to: (1) NEIC's Multi-Media Compliance Audit Procedures; (2) the EPA Office of Administration's Environmental Auditing Protocol; (3) the NEIC Policy and Procedure Manual; and (4) the Corporate Management Systems Report Protocol provided in Appendix 3 of this Decree/Agreement (See Paragraph 26 below).

9. Review of Work Plan.

(1) Within 30 days of the Audit Seminar, the Audit Firm shall submit to Defendant/Respondent and EPA a proposed Work Plan which shall specify the Audit Firm's plan for implementing the Scope of Work. Said

Work Plan shall include the auditing protocols to be used by the Audit Firm; a schedule for conducting facility audits and completion of all other tasks set forth in the Scope of Work; and the names and resumes of those Audit Firm employees who will be primarily responsible for performance of the tasks set forth in the Scope of Work. The proposed Work Plan shall not specify the order of audits or otherwise provide Defendant/Respondent with advance notice of specific audits.

(2) EPA and Defendant/Respondent shall have 30 days from the date of receipt of the proposed Work Plan to submit in writing any proposed revisions to the proposed Work Plan.

(3) The Audit Firm shall have fifteen (15) days from the date of receipt of these revisions within which to submit in writing its comments on these proposed revisions.

(4) Within ten (10) days of receipt of the Audit Firm's comments, EPA shall issue its final decision as to the work plan, which shall be binding on both Defendant/Respondent and the Audit Firm.

(5) The provisions of this Paragraph shall also be set forth as provisions of the contract between Defendant/Respondent and the Audit Firm for the performance of the subject audits.

10. Facilities to be Audited. The Audit Firm shall, subject to the provisions set forth herein, conduct comprehensive RCRA/TSCA Compliance Audits (see Paragraphs 11 through 25) and a Management Systems Audit (see Paragraphs 26 and 27) of the facilities listed in Appendix 1 of this Decree/Agreement. The designation of RCRA/TSCA as the primary areas of audits shall not prohibit the Audit Firm from auditing and reporting violations of any other environmental statutes or regulations should those violations come to the attention of the Audit Firm audit team during the inspections. Notice of individual facility audits shall be provided to NEIC at least thirty (30) days prior to scheduled visits. Advance notice of individual facility inspections shall not be provided to Defendant/Respondent.

FACILITY COMPLIANCE AUDITS

Review of Records

11. Records to be Examined.

a. Records Relevant to Compliance with RCRA.

Facility audits may include a review of any facility record of Defendant/Respondent or its predecessors from November 1980. Other records pre-dating November 1980 which bear on the facility's compliance after November 1980 may also be examined, but only to the extent that they are necessary to render judgment regarding any event occurring after November 1980.

b. Records Relevant to Compliance with TSCA.

Facility audits may include a review of any facility record of Defendant/Respondent or its predecessors from April 1978 which is relevant to compliance with TSCA and its implementing regulations. Other records pre-dating April 1978 which bear on the facility's compliance after April 1978 may also be examined, but only to the extent that they are necessary to render judgment regarding any event occurring after April 1978.

c. Records to be Examined by the Audit Firm. Records to be examined include but are not limited to:

(1) all records required by federal, state or local law to be maintained by Defendant/Respondent.

(2) facility operating records, including but not limited to waste profile sheets, containing waste pre-acceptance data, receiving logs, analytical verification data, waste tracking data for intra-facility movement of received wastes or wastes generated on-site, waste storage data, waste treatment data, and data reflecting the disposition of received wastes.

(3) corporate and facility guidelines, policies and internal operating rules pertaining to facility operations, inspections, personnel training, and recordkeeping procedures.

(4) corporate guidelines, policies and internal operating rules pertaining to emergency response, site closure, and postclosure activities.

(5) applications, licenses, permits and approvals (including state permits and approvals), RCRA operation plans, or other regulatory documents pertaining to on-site activities at the facility.

(6) environmental monitoring plans for the facility.

(7) waste treatability studies.

(8) PCB operations plans, letters of approval, pumping logs, and records pertaining to the processing or handling of transformers, capacitors, and/or any other PCB articles, items and containers.

(9) manifests for wastes entering or leaving any Defendant/Respondent facility.

(10) records of use, maintenance and decommissioning of vehicles used on-site and/or off-site for the transportation of RCRA/TSCA wastes to, from, and within any Defendant/Respondent facility.

(11) vehicle washing records.

(12) any effluent data, including data on any direct discharge to surface water or any discharge to a publicly owned treatment facility, which Defendant/Respondent is required to keep pursuant to any federal, state, or local permit or regulation.

12. Access to Documents. The Audit Firm and representatives of the Agency, including contractors, shall have full, unfettered access to all documents bearing upon compliance with RCRA or TSCA kept at each facility or at Defendant's/Respondent's corporate headquarters, regardless of whether these records are deemed by Defendant/Respondent to constitute CBI or deemed by the Audit Firm to indicate or support a violation. The Defendant/Respondent shall retain and make available to EPA copies of any Defendant/Respondent document(s) examined by the Audit Firm which indicate or support any violation detected during the audit program. The Audit Firm shall prepare and provide to EPA a full and complete index of all documents that it examines to ensure that the Defendant/Respondent retains these records for subsequent EPA inspection.

13. Public Access to Records. Each document submitted by Defendant/Respondent to the Audit Firm or EPA pursuant to this Decree/Agreement shall be subject to public inspection unless it is determined by EPA (following a claim made by Defendant/Respondent) to be CBI in accordance with Paragraphs 5(2) and 14 of this Decree/Agreement.

14. Assertion of Confidential Business Information Claims.

a. Defendant/Respondent recognizes that EPA will treat as TSCA CBI only that information claimed confidential which EPA uses for purposes related to TSCA.

b. Claims that information is CBI shall be made on or before the date on which such information is provided to the Audit Firm or EPA.

15. Tentative Observance of CBI Claims. Any information claimed by Defendant/Respondent and asserted to meet the criteria set forth in Paragraph 5(2) will be treated by EPA as confidential in accordance with 40 C.F.R. §§2.201 through 2.215 and any relevant special confidentiality regulations at 40 C.F.R. §§2.301 et seq. pending any final determination that the information is not CBI.

16. Preservation of Records. Defendant/Respondent shall preserve all Records examined by the Audit Firm for three years after submission of its Corporate Management Report and Plan to EPA (See Paragraph 27 below). Nothing in this provision shall authorize destruction of any document required by law or regulation to be preserved for any period of time in excess of three years.

17. Examination of Groundwater Monitoring Information. The Audit Firm shall be required to examine and submit to EPA groundwater monitoring plans and data for each Defendant/Respondent facility listed in Appendix 1 of this Decree/Agreement.

18. Audit Schedule/Agency Access to Defendant's/Respondent's Facilities. All audits by the Audit Firm of the sites listed in Appendix 1 of this Decree/Agreement shall be completed within 180 days of EPA approval of the Work Plan as described in Paragraph 9 above. Representatives of the Agency, including contractors, may accompany audit teams from the Audit Firm on site audits performed by the Audit Firm and oversee the performance of the audits by the audit teams for the purpose of ensuring that the audit procedures and protocols required by the contract are followed.

19. Facility Audit Reports. As each separate facility audit is completed, the Audit Firm shall, no later than 30 days thereafter, simultaneously submit to Defendant/Respondent and the Agency a copy of a Facility Audit Report as defined in Paragraph 5(7). The failure of the Facility Audit Report to include all of the required information for any violation specified in the report shall not be grounds for avoidance of any penalty which is payable under the Penalty Schedule set forth in Appendix 2. The Agency shall not be bound by any

determination of the Audit Firm indicating that Defendant/Respondent is in compliance with any applicable statutory or regulatory requirement.

20. Correction of Violations/Submission of Compliance Plans. In addition to paying the penalties set forth in the Penalty Schedule below, Defendant/Respondent shall:

(1) correct any violation indicated within a Facility Audit Report as soon as is physically possible.

(2) No later than 60 days after it has received an individual Facility Audit Report, submit to the Agency a Compliance Report and Plan.

The Agency shall not be bound by any Defendant/Respondent determination that it has achieved compliance, that the compliance was physically impossible to achieve, or that the times for corrective actions proposed by Defendant/Respondent to achieve compliance are reasonable. All corrective actions mandated by this Decree/Agreement shall be undertaken in accordance with applicable federal, state and local law.

PENALTIES AND CORRECTIVE ACTION

21. For Missed Audit Deadlines. Defendant/Respondent shall pay the following stipulated penalties for any failure by Defendant/Respondent to comply with any time requirement set forth in this Decree/Agreement:

<u>Period of Failure to Comply</u>	<u>Penalty per Day of Delay</u>
1st day through 14th day	\$ 5,000.00
15th day through 44th day	\$10,000.00
45th day and beyond	\$15,000.00

For Violations of RCRA/TSCA

22. Payment of Penalties. For every violation of RCRA or TSCA reported in each Facility Audit Report, Defendant/Respondent shall pay a penalty based on the Penalty Schedule provided as Appendix 2 of this Decree/Agreement. The listing of the violation in a Facility Audit Report shall be conclusive and binding on Defendant/Respondent, and the amount set forth in the Penalty Schedule shall be due and payable by certified check to the "Treasurer of the United States." The check shall be remitted to:

[appropriate EPA lockbox address]

within 30 days of receipt of the applicable Facility Inspection Report. Penalties shall accrue from the date the violation is determined to have begun to the date such violation is corrected

or abated. Subject to the rights reserved in Paragraph 25 below, EPA will not take further enforcement action on those violations for which penalties are paid and corrective action taken in compliance with this Decree/Agreement.

23. Unlisted Violations. In the event that the audit firm reports statutory or regulatory violations other than those listed in Appendix 2, Defendant/Respondent shall correct such violations as soon as is physically possible. In addition, the parties will, for a period of 60 days following receipt of the Facility Audit Report in which such unlisted violations are contained, attempt to settle by negotiation the appropriate remedy and penalties Defendant/Respondent shall pay for such unlisted violations. In such negotiations, the parties will compare each unlisted violation to the most similar listed violation, if possible. In the event of failure of the parties to achieve settlement of unlisted violations within 60 days, EPA shall be free to take any enforcement measure authorized by law.

24. Uncorrected or New Violations. Beginning on the date EPA receives a Facility Audit Report, Defendant/Respondent shall have sixty (60) days to correct violations cited therein. For any previously reported violation discovered to be uncorrected at the end of such sixty (60)-day-period, Defendant/Respondent shall pay a civil penalty of \$25,000 per day for each day of continued noncompliance unless, within sixty (60) days, Defendant/Respondent has notified the Agency in accordance with Paragraph 20 that compliance is physically impossible and has obtained a final decision from the Agency verifying such physical impossibility. If, during the audit period or during the first post-audit inspection, the Agency discovers violations which were not reported to the Agency by the Audit Firm, for such violations Defendant/Respondent shall pay a civil penalty as set forth in the Penalty Schedule (Appendix 2). In addition, the Agency reserves the right to initiate civil or criminal action (or both) with regard to any previously reported and uncorrected violation and any violation not previously reported.

25. Reservation of Rights.

a. Reservation of States' and Local Governments' Right to Inspect Defendant's/Respondent's Facilities.

Nothing in this Decree/Agreement shall limit the authority of EPA or any state or local government to enter and inspect any Defendant/Respondent facility.

b. Reservation of Agency's Right to Seek Relief.

Except as provided in Sections 21 through 24 above, nothing in this Decree/Agreement shall be construed to limit the ability of the United States to take any enforcement action authorized by law.

MANAGEMENT SYSTEMS AUDIT

26. Corporate Management Systems Report. No later than 60 days after the last Facility Audit Report is submitted to Defendant/Respondent and EPA, the Audit Firm shall submit to Defendant/Respondent and EPA a Corporate Management Systems Report as defined in Paragraph 5(4) of this Decree/Agreement.

27. Corporate Management Report and Plan. No later than 90 days after it has received the Corporate Management Systems Report, Defendant/Respondent shall submit to the Agency its own Corporate Management Report and Plan describing in full detail what actions it has taken or will take to implement the findings of the Corporate Management Systems Report.

MISCELLANEOUS TERMS

28. Submission of Reports. Any reports produced by the Audit Firm, including Facility Audit Reports and the Corporate Management Systems Report, shall be submitted simultaneously to EPA and Defendant/Respondent. The Audit Firm shall not share draft copies of such reports with Defendant/Respondent unless such drafts are simultaneously submitted to EPA. The requirements of this Paragraph shall be set forth as a requirement in the contract between Defendant/Respondent and the Audit Firm for the performance of the audits described herein.

29. Effective Date of Decree/Agreement. This Decree/Agreement shall be considered binding and in full effect upon approval by the Federal district court judge/administrative law judge to whom this matter has been assigned.

30. Notice. All submissions and notices required by this Order shall be sent to the following address(es):

[insert address(es) of EPA office(s) overseeing Decree/Agreement]

31. Modification. This Decree/Agreement may be modified upon written approval of all parties hereto, and concurrence of the Federal District Court Judge/administrative law judge assigned to this matter.

32. Dispute Resolution.

(1) The parties recognize that a dispute may arise between Defendant/Respondent and EPA regarding plans, proposals or implementation schedules required to be submitted, regarding tasks required to be performed by Defendant/Respondent pursuant to the terms and provisions of this Decree/Agreement, or regarding whether Defendant/Respondent has incurred liability to pay stipulated penalties under Paragraphs 19 through 24. If such a dispute arises, the parties will endeavor to settle it by good faith negotiations among themselves. If the parties cannot resolve the issue within a reasonable time, not to exceed thirty (30) calendar days, the position of EPA shall prevail unless Defendant/Respondent files a petition with the court/administrative law judge setting forth the matter in dispute. The filing of a petition asking the court/administrative law judge to resolve a dispute shall not extend or postpone Defendant's/Respondent's obligations under this Decree/Agreement with respect to the disputed issue.

(2) In presenting any matter in dispute to the court/administrative law judge, Defendant/Respondent shall have the burden of proving that EPA's interpretation of the requirements of this Decree/Agreement are arbitrary, capricious, or otherwise not in accordance with the law.

33. Continuing Jurisdiction of the District Court/Administrative Law Judge. The district court/administrative forum in which this Decree/Agreement is entered shall retain jurisdiction until all obligations set forth herein are satisfied.

34. Relation to RCRA Permitting Process. Notwithstanding any other provision of this Decree/Agreement, EPA hereby reserves all of its rights, powers and authorities pursuant to the provisions of 42 U.S.C. §§6901 et seq. (RCRA) governing permits for facilities, and the regulations promulgated thereunder.

35. Violations Not Covered by RCRA or TSCA. No stipulated penalty or other remedy agreed to shall cover or apply to non-RCRA, non-TSCA violations. The parties shall be left to their respective rights, liabilities and defenses with regard to these matters.

36. Continuing Audit Requirement. For the five-year-period beginning on the date that Defendant/Respondent submits to the Agency the Corporate Management Report and Plan required by Paragraph VII. 27. of this Decree/Agreement, Defendant/Respondent shall conduct comprehensive audits not less often than annually of the compliance of its facilities with [applicable statutory and regulatory requirements]. After the initial audit by a third party consultant (as required by this Decree/Agreement), such audits may be conducted by such a consultant or by an independent audit staff of the company not responsible to production management. Reports of the results of such audits shall be furnished to the [appropriate corporate environmental official and plant manager]. Within thirty (30) days after completion of each final annual audit report, Defendant/Respondent shall submit to EPA a report of incidents of noncompliance identified by the audit and steps that will be taken to correct any continuing noncompliance and prevent future incidents of noncompliance.

PENALTY SCHEDULE

<u>RCRA Violation</u>	<u>Penalty</u>
I. Groundwater Monitoring 40 C.F.R. §§ 264.91 and 265.91	\$22,500.00 per missed sampling event
II. Unsaturated Zone Monitoring 40 C.F.R. §§ 264.97 through 264.100 and 265.92 through 265.94	\$22,500.00 per missed sampling event
III. Waste Analysis Plans: Content and Implementation 40 C.F.R. §§ 264.13(a) and (b), and 265.13(a) and (b)	\$25,000.00
IV. Bulk Liquids in Landfill 40 C.F.R. §§ 264.314(a) and 265.314(a)	\$22,500 per day of occurrence
V. Containerized Liquids Disposal in Landfill 40 C.F.R. §§ 264.314(b) and 265.314(b)	\$22,500.00 per day of occurrence
VI. Waste Tracking within TSD facility 40 C.F.R. § 264.222	\$25,500.00
VII. Maintenance of Minimum Freeboard level for Surface Impoundment 40 C.F.R. § 264.226(c)	\$6,500.00 per freeboard violation
VIII. Ignitable/Reactive Disposal in Landfill 40 C.F.R. §§ 264.312 and 265.312	\$9,500.00 per cell, per day
IX. Land Disposal (direct application to unlined surface soils) of non- biodegradeable wastes 40 C.F.R. §§ 264.272(a) and 265.272(a)	\$22,500.00 per day

<u>RCRA Violation</u>	<u>Penalty</u>
X. Trial test of waste compatibility prior to discharge into surface impoundment 40 C.F.R. § 265.225	\$22,500.00 per day of event
XI. Trial test of waste solidification process prior to landfill 40 C.F.R. §265.402	\$22,500.00 per day
XII. Failure to control wind dispersal of land treatment waste disposal zones 40 C.F.R. §§ 264.272(e) and 265.273(f)	\$22,500.00 per unit
XIII. Incompatible wastes placed into surface impoundment 40 C.F.R. §§ 264.230 and 265.230	\$22,500.00 per day
XIV. Unauthorized expansion of TSD facility during Interim status 40 C.F.R. §270.72	\$20,000.00 per day or as needed to recapture all profits gained
XV. Closure of Units w/o demonstration of compliance with facility closure plan 40 C.F.R. §§ 264.113 and 265.113	\$25,000.00 per unit
XVI. Inadequate closure/ post -closure inspection/maintenance plans 40 C.F.R. §§ 264.112 and 265.112	\$15,000.00 per unit
XVII. Absence of post-closure groundwater monitoring program 40 C.F.R. §§ 264.117(a)(1) and §265.117(a)(2)	\$22,500.00 per day

	<u>RCRA Violation</u>	<u>Penalty</u>
XVIII.	Failure to update closure/ post closure plan cost estimates 40 C.F.R. §§ 264.144(c) and 265.114(c)	\$3,000.00 per day
XIX.	No schedule included for closure activities 40 C.F.R. §§ 264.112(a) and 265.112(a)	\$6,500.00 per plan milestone omitted
XX.	Inadequate Part A Applications, absence of identified operating units 40 C.F.R. §270.13	\$9,500.00 per unit not properly identified
XXI.	Inadequate Part B Application 40 C.F.R. §270.14	\$9,500.00 per unit not properly identified
XXII.	Absence of complete facility Inspection Plan, units omitted 40 C.F.R. §§ 264.15(b) and 265.15(b)	\$2,250.00 per unit emitted, per day
XXIII.	Failure to record on facility inspections reports repairs or remedial measures taken 40 C.F.R. §§ 264.15(b) and 265.15(d)	\$2,250.00 per omission
XXIV.	Failure to inspect freeboard levels of surface impoundments 40 C.F.R. §§ 264.226(b), (c) and 265.226(a)	\$2,250.00 per occurrence
XXV.	Operating Record Omissions failure complete grid maps of landfilled lifts of waste 40 C.F.R. §§ 264.309 and 265.309	\$2,250.00 per omission

<u>RCRA Violation</u>	<u>Penalty</u>
XXVI. Failure to record on-site generated hazardous wastes i.e. truck washing facility 40 C.F.R. § 262.41(b)	\$9,500.00 per unrecorded event
XXVII. No training provided to employee assigned to do waste analyses 40 C.F.R. §§ 264.16 and 265.16	\$3,000.00 per untrained employee
XXVIII. No analyses performed on materials added to on-site waste piles 40 C.F.R. § 265.252	\$22,500.00 per event
XXIX. Records not provided to Agency within 48 hours of request. 40 C.F.R. §§ 264.74 and 265.74	\$6,500.00 per day of delay
XXX. Fence not installed around all operating areas of TSD facility 40 C.F.R. §§ 264.14 and 265.14	\$1,000.00
XXXI. Emergency Contingency Plan Inadequacies 40 C.F.R. §§ 264.52 and 265.52	\$2,225.00 per component deficiency
XXXII. Failure to Meet Financial Responsibility Requirements 40 C.F.R. Part 264, Subpt. H and Part 265, Subpt. H	\$25,000.00 per day of delay

<u>TSCA Violation</u>	<u>Penalty</u>
XXXIII. Improper Disposal of PCBs 40 C.F.R. §§ 761.60 (a)-(d). --1,100 or more gallons or 750 or more cubic feet of PCB contaminated material.	\$25,000.00 per day, per violation

	<u>TSCA Violation</u>	<u>Penalty</u>
	--220-1,000 gallons or 150-750 cubic feet of PCB contaminated material	\$17,000.00 per day, per violation
	--less than 220 gallons or 150 cubic feet of PCB contaminated material	\$5,000.00 per day, per violation
XXXIV.	Failure to Dispose of PCBs by Jan. 1, 1984. 40 C.F.R. § 761.65(a)	
	--1,100 or more gallons or 750 or more cubic feet of PCB contaminated material.	\$25,000.00 per day, per violation
	--220-1,100 gallons or 150-750 cubic feet of PCB contaminated material.	\$17,000.00 per day, per violation
	--less than 220 gallons or 150 cubic feet of PCB contaminated material.	\$5,000.00 per day, per violation
XXXV.	Failure to Dispose of PCBs within one year of removal from service. 40 C.F.R. § 761.65(a)	
	--1,100 or more gallons or 750 or more cubic feet of PCB contaminated material.	\$25,000.00 per day, per violation
	--220-1,100 gallons or 150-750 cubic feet of PCB contaminated material.	\$17,000.00 per day, per violation
	--less than 220 gallons or 150 cubic feet of PCB contaminated material.	\$5,000.00 per day, per violation
XXXVI.	Improper Processing of PCBs 40 C.F.R. § 761.20(a)	\$20,000.00 per day, per violation

<u>TSCA Violation</u>	<u>Penalty</u>
XXXVII. Improper Distribution of PCBs (sale) in commerce. 40 C.F.R. § 761.20(a)	\$20,000.00 per day, per violation
XXXVIII. Improper treatment and testing of waste oils. 40 C.F.R. §§ 761.60(g)(2)(i) and (ii)	\$25,000.00 per day, per violation
XXXIX. Improper Use of PCBs 40 C.F.R. § 761.20(a)	\$25,000.00 per day, per violation
XXXX. Improper use of PCBs (road oiling; dust control; sealants) 40 C.F.R. § 761.20(d)	\$25,000.00 per day, per violation
XXXXI. Improper use of PCBs . - Transformers 40 C.F.R. § 761.30(a) - Capacitors 40 C.F.R. § 761.30(l) - Heat transfer systems 40 C.F.R. § 761.30(d)	\$20,000.00 per day, per violation
XXXXII. PCB Storage Violations - 40 C.F.R. § 761.65(b) (facility criteria) - 40 C.F.R. § 761.65(c)(7)(ii) (spill plan development) - 40 C.F.R. § 761.65(c)(8) (management of liquids in storage)	\$15,000.00 per day, per violation.
XXXXIII. Recordkeeping Violations (storage for disposal) 40 C.F.R. § 761.180(a)	\$10,000.00 per day, per violation
XXXIV. Recordkeeping violations (disposal facilities) Incinerators 40 C.F.R. § 761.180(c) Chemical waste landfills 40 C.F.R. § 761.180(d)	\$15,000.00 per day, per violation

	<u>TSCA Violation</u>	<u>Penalty</u>
XXXXV.	Marking Violations 40 C.F.R. § 761.40(a)	\$15,000.00 per day, per violation
XXXXVI.	Failure to Date PCB Items placed into storage 40 C.F.R. § 761.180(a)	\$5,000.00 per day, per violation
XXXXVII.	Violation of any condition of a PCB chemical waste landfill (40 C.F.R. § 761.75) or incinerator (40 C.F.R. § 761.70) operation approval.	\$25,000.00 per day, per violation
XXXXVIII.	Failure to decontaminate PCB container, tanker trucks, etc. 40 C.F.R. § 761.79	\$25,000.00 per day, per violation

CORPORATE MANAGEMENT SYSTEMS REPORT PROTOCOL

The Corporate Management Systems Report shall:

(1) Identify and describe the existing facility waste management operations and the Environmental Management Department's systems, policies and prevailing practices as they affect Defendant's/Respondent's corporate compliance with RCRA and TSCA.

(2) Evaluate such operations, systems, practices, and policies and identify and describe fully the perceived weaknesses in such operations, systems, practices, and policies by comparing them, to the extent practicable, to the existing practices, programs and policies of other RCRA and TSCA waste management corporations operating within the continental United States and to generally accepted corporate management practices.

(3) Based on the evaluation required in paragraphs (1) and (2) above, the consultant shall identify and describe fully with supporting rationales the perceived areas, if any, where Defendant's/Respondent's inter- and intra-facility waste management operations and corporate to operating level environmental management systems, practices and policies may be improved. The Corporate Management Systems Report shall list specific options for improvements in the following areas:

(a) Corporate data management practices pertaining to the following items:

- i. compliance budgets;
- ii. staffing;
- iii. training;
- iv. auditing;
- v. incident reporting, including but not limited to manifest exception reports and any unpermitted disposal, release, or discharge;
- vi. quality assurance test reporting;
- vii. quality control reporting;
- viii. generator waste profile reports, facility pre-acceptance reports, and acceptance analysis as these items compare to each facility's stated basis for accepting or rejecting individual waste loads; and

- ix. facility mass balance records reflecting the internal disposition of all wastes received for final disposal.

(b) Corporate data evaluation practices, capabilities and policies pertaining to reports to and from compliance officers, internal and external environmental audits, regulatory agency notices of violation and all other compliance data documents which when evaluated may lead to changes in TSD operating procedures or directives by corporate management to modify any individual or multi-facility TSD facility operating procedures.